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THE CONSTITUTIONAL HISTORY OF THE AUSTRALIAN CHURCH

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THE CONSTITUTIONAL HISTORY OF THE AUSTRALIAN CHURCH

By

R. A. GILES, M.A.(OXON.),

VICAR OF SHERIFFHALES

WITH A FOREWORD BY THE RIGHT REV.
THE LORD BISHOP OF SALISBURY

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NUPER PER XV. ANNOS

MELBURNENSI ARCHIEPISCOPO

Qui summo ingenio præditus
et vitæ simplicitate insignis
Ecclesiæ sapientissime præfuit,
necnon et res ecclesiasticas provinciales
præclare et gessit et descripsit,
Hanc ecclesiæ australensis historiam,
Testimonium qualecunque reverentiæ et amoris
dedicat

R. A. GILES

FOREWORD

"IF the Anglican Communion is to render that service to the varied needs of mankind to which the Church of our day is specially called, regard must be had both to the just freedom of its several parts and to the just claims of the whole communion upon its every part." It is now twenty years since these words were written in the encyclical letter of the Lambeth Conference of 1908,[1] but they have gained, rather than lost in poignancy during the intervening years. The adjustment of loyalty and liberty is a problem which goes back to the first great Christian missionary and earlier. How to reconcile the claims of loyalty to the Church Catholic with that liberty of spirit which is the privilege of every community is one of the greatest problems with which the Church in every age has been faced.

To effect this reconciliation we have to go down to the very roots of our conception of the visible Church. Granted that the Church is the expression of that inward fellowship which belongs to all followers of Christ, what is its proper organization upon earth? Shall we aim at local autonomy or centralized government? Are we federalists or papalists? And if local autonomy is our ideal, how shall we prescribe the areas in which autonomy is to be set up? What is the precise meaning of the phrase "particular or national churches" in our 34th Article? And again, is there any nexus to safeguard the orthodoxy of these "national and particular churches" other than the unity of spirit which binds them together in the one body under the common Head Who is in Heaven? It is questions of this kind that have occupied leading churchmen in all our young churches of the Dominions, for the political aspirations of these Dominions towards nationhood has its counterpart in the spiritual sphere, and in one way or another each of these churches is working out its own answer.

In Australia this process has been slow and only now is finality in sight. The relationship between the Church in

[1] Page 40.

Australia and the Anglican Communion as a whole has never been satisfactorily defined in theory, and the lack of definition has both hindered effective work and also opened the door to controversy. But a change is in sight. As a result of the willing labour and co-operation of leading Churchmen throughout Australia a Constitution has been evolved to remedy the present state of affairs ; and by the readiness of many of the dioceses to sacrifice time-honoured privileges, the new Constitution has now reached the stage at which it is practically certain to become law.

It is a thrilling moment in the history of the Australian Church. After long and patient investigation the claims of freedom have been harmonised with the claims of loyalty. By its united action the Church has once more vindicated the divine life which inspires love, and by God's grace the Australian Church will now go forward to fresh labours and more glorious conquests for Christ.

Mr. Giles has put us all under a great obligation by his comprehensive survey of this great process. He has shown in this volume how unsatisfactory was the situation before the relationship between the Church in Australia and the Anglican Communion was satisfactorily defined. He has traced the steps by which that situation has been cleared up. In this work he has built with loyalty and with discrimination upon the foundation laid by the late Archbishop of Melbourne in his volume on *Constitutional Church Government*, and he has had the advantage of Dr. Micklem's Moorhouse Lectures on *The Principles of Church Organization*. But the work here presented is the fruit of his own zeal and application. It is frankly intended as a book of reference ; but it appears at an opportune moment, and there will be many who will find in it not only an accurate presentation of the facts, but a story full of interest and encouragement of the birth and development of a modern Church.

ST. CLAIR SARUM.

THE PALACE,
SALISBURY.

PREFACE

AT the present time, the Australian Church is attempting with an unprecedented determination to set her constitutional house in order. The situation in which she now finds herself is the result of a growth of some 140 years, a growth in which there has been no uniformity of development. The Church in each Colony was originally an isolated unit and this isolation has never been successfully overcome ; effective unity has been an ideal rather than a reality, at times hardly even an ideal ; and the bond of union has been rather the inheritance of a common tradition than a visible outward organization. To secure outward as well as inward unity and by so doing to place the Church in the different States on a uniform basis, is the purpose of the present endeavours of the Church in Australia. It may involve the rupture of some old ties, but those whose vision is widest are agreed that the proposed legislative changes are highly necessary.

It is the aim of this treatise to trace out the development of the history of the constitution of the Church in Australia from the time of the first settlement on the Continent in 1788. Not unnaturally, the task has been rendered much more difficult by the absence of any uniformity of growth in the various Colonies ; but the correspondingly greater interest resulting from this diversity has been a more than adequate compensation. Chapter I, which is of the nature of an introduction, need be read only by the unsophisticated ; it deals with the romance of the exploration and civil development of the Continent. The close connection between the ecclesiastical and civil legislation of the Colony at several points rendered an account of the latter necessary (Chapter II).

A third chapter is devoted to the history of the Church in Australia (apart from specifically constituted problems). Chapter IV, where our main theme begins, treats the course

of development up to the middle of the last century. Chapter V deals with the highly important Sydney Conference of the year 1850. Then follow six chapters, devoted to the growth of synodical government in the differing Colonies; Victoria and South Australia are treated first since they exemplify in a pure form respectively the two fundamental methods of Church organization in Australia. In New South Wales, the oldest Colony (treated in Chapter VIII), the development was particularly involved.

Chapter XII treats of legislation in so far as it concerns Church property. In the remaining chapters we are brought into contact with the later organization of the Church, and its relation to the burning problems of to-day.

As far as possible, I have used the original authorities. Many of these will be found printed (I believe in some cases for the first time) in the Appendices. Most of the Letters Patent are to be seen in the Archiepiscopal Registers and Act Books in the Lambeth Palace Library; but in some cases reference must be made to the Public Record Office. For the legal documents, reference of course has been made to the proper legal sources. Much invaluable material for the early history of the Church is to be derived from the *Historical Records of New South Wales* and the *Historical Records of Australia*,—two works which are admirably edited, the latter of which is still unfinished.

It is necessary to make some reference here to the enormous collection of material which was made by the late Dr. H. Lowther Clarke, Archbishop of Melbourne, in his *Constitutional Church Government*. That book will for long be of the greatest value in directing those who are working on the Constitutional History of the Church in our different Colonies to those endless sources of information with which the Archbishop was acquainted.

But a caution is necessary. The book is not only at times inaccurate in the text, but even some of the documents which the Archbishop prints are found not to agree on comparison with the originals, since they have often been amended (sometimes without any mention of the fact) in accordance with later legislation. If Dr. Lowther Clarke had been spared to revise the work for a second edition, no doubt most of these defects would have disappeared. As it is, they detract seriously from its value for the historian. Such criticisms may appear ungenerous towards an author

no longer with us, above all on the part of one who knew him, and valued him as a counsellor and friend and to whose inspiration the present treatise owes its genesis. But the Archbishop himself never allowed such matters to influence his own considered judgment, and if I presume to point out what I consider the defects as well as the merits of his volume—the only previous work on the subject—I am but following the noble spirit of its author. It is as a slight tribute to Henry Lowther Clarke's sterling and single-minded integrity of purpose that the author ventures to inscribe his name at the beginning of this volume.

In conclusion, I have the pleasant duty to perform of thanking those without whose generous assistance the present work would never have been completed. First and foremost my thanks are due to Professor Claude Jenkins, Professor of Ecclesiastical History at King's College, London, and Keeper of the Records at Lambeth, for the directions of this study, particularly in its earlier stages.

Several kind friends and acquaintances have assisted, either in criticism of the manuscript or in supplying information. Among these are Dr. L. B. Radford, Bishop of Goulburn; Dr. P. A. Micklem, Rector of St. James', Sydney, and author of *The Principles of Church Organization;* Dr. St. Clair Donaldson, formerly Archbishop of Brisbane and now Bishop of Salisbury; Professor the Hon. J. B. Peden, K.C., M.L.C., Chancellor of the Diocese of Bathurst, New South Wales; Dr. W. Charles Prichard, Editor of the *Church Standard*, Australia; The Right Reverend G. A. D'Arcy-Irvine, Coadjutor Bishop of Sydney. To the Librarians of the following libraries for valuable assistance: The Lambeth Palace Library; the Library of the Middle Temple; the Library of S. Deiniol's College, Hawarden; the Mitchell Library, Sydney; the Royal Historical Society's Library, Sydney; and the Library of the Bishop's Registry, Sydney. The last three named were consulted on the occasion of two recent visits to Australia. For the loan of books and documents I am indebted to Mrs. E. W. Tufnell; the Primus of Scotland; the Bishop of Salisbury; and the Libraries of the S.P.C.K., the S.P.G., and the C.M.S. To my former tutor, Dr. D. C. Simpson, Oriel Professor of the Interpretation of Holy Scripture at Oxford, I am indebted for much valuable advice; to the Rev. F. L. Cross of the Pusey House, Oxford, for assistance in the

preparation of the manuscript for publication. My sister, Mrs. H. M. Spong, has devoted countless hours to the transcribing of the text ; to her also I owe a great debt of gratitude.

R. A. G.

Sheriffhales Vicarage,
Shropshire,
September 1st, 1928.

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The Constitutional History of the Australian Church

CHAPTER I

AN OUTLINE OF AUSTRALIAN HISTORY

I. Introduction

THE conditions under which Christianity grew up in the British Colonies were unknown before in the history of the Church.

The Church, indeed, from the first has had an essentially missionary character, and this has meant that growth is as fundamental to it as to any living organism. But it is almost solely to modern times that we must look for the growth of a Church in a land where the great bulk of the population were themselves Christian Colonists. For such, Christianity is something which they have brought with them, and in such circumstances the history of the Church is inseparable from the history of the State. Throughout the Empire the English Church has followed in the wake of the Colonists. No apology, therefore, is needed for a short introduction dealing with the growth of Colonisation in Australia.

II. Early Expeditions

This great southern continent—the Terra Australis Nondum Cognita[1]—was thought to form the southern shores of the Straits of Magellan, and the old maps show a northward projection of it in the region since found to be occupied by Australia with New Guinea drawn as a separate island off the main coast. It is probably to the Portuguese that this reference on the map owes its origin ; for there is reason to suppose that, while on the eastward passage to the

[1] *Wyfliete's Map of* 1597. See Bartholomew & Cramp's *Atlas of Australian Maps*, 1919, p. 47.

Spice Islands, their ships were driven out of their course by storms. This, however, is only hypothesis. There is no written record to substantiate the theory, and Australia was an unknown land at the opening of the seventeenth century.

To the credit of the Dutch lies its early exploration, for, in 1606, the Dutch authorities at Bantam despatched William Janszoon to make investigations. Janszoon explored the south-western coast of New Guinea and the eastern side of the Gulf of Carpentaria, and, not realising that a passage existed between them, thought that New Guinea and Australia were one. In the same year, two Spanish commanders sailed from South America with the object of exploring the South Pacific. They discovered the Polynesian Islands and then separated. Luis Vaez de Torres, the more persevering of them, continued till he sighted the east end of New Guinea, sailed along its south coast, and proved it to be an island by passing through the strait which now bears his name. On his return to America, however, news of his discovery was not made public.

The exploration of Australia began again in 1616 and during the next decade a series of Dutch voyages resulted in the charting of the western, and of half of the southern, coast by merchantmen driven out of their course on the voyage from the Cape of Good Hope. Two voyages in 1623 and 1636 revealed parts of the northern coasts to the west of the Gulf of Carpentaria. But Australia was not proved to be an island continent till 1642, when Abel Tasman sailed from Batavia to solve the problem. He first went to Mauritius, and then sailed far into the Southern Ocean, and turned eastwards until he sighted a land which he named after Van Diemen, the Governor-General of the Dutch Indies.[1] He pressed on farther east until he discovered the south island of New Zealand, which he named Staaten Land. Thence he returned to Batavia by the north of New Guinea, thus circumnavigating Australia and showing conclusively that it was an island. Two points, however, should be noted: first, he did not sight the eastern shore, which remained unexplored for another century; secondly, he did not grasp the fact that Tasmania was a separate island. With the voyages of Tasman, the exploration of Australia and the Pacific ceased until the end of the seventeenth century, mainly because the Dutch were seeking for rich trading

[1] The name Van Diemen's Land was later (1853) changed to Tasmania.

lands rather than for sites for settlement—a fact which also accounts for their lack of interest in new discoveries. For some fifty years, Australian exploration remained at a standstill.

III. Dampier

To the Englishman, William Dampier, must the revival of interest in this little-known land be attributed. He was evidently unaware of Tasman's discoveries, as he declared himself uncertain whether the land was an island or not Dampier, as a West India buccaneer, made a visit in 1689 to the west coast. This, his first visit, was but a cursory one, as he decided the place was useless for his own particular business of piracy. But in 1699 Dampier again set out, this time in command of a King's ship, the *Roebuck*, and, in August of that year, reached the west coast, of which he gave an account substantially identical with that previously given : i.e. that it was of little value. These reports afforded little inducement to further exploration.[1]

IV. Developments following on Seven Years' War

The close of the Seven Years' War heralded the real beginnings of Australasian development at the hands of the British and the French. The English victories in that War had aroused in ourselves the fever for further colonization ; in the French the necessity for it. Four British and three French expeditions sailed for the Pacific between the years 1764 and 1771 with the hope of making discoveries in these latitudes. Of the British navigators, the most noteworthy was Captain James Cook, who, in 1769, in command of the *Endeavour*, conveyed a party of scientists, including Sir Joseph Banks, to Tahiti to view the transit of the planet Venus across the disc of the sun. This object achieved, Cook determined to visit the lands discovered by Tasman in 1642,[2] and " after some weeks spent zigzagging in these uncharted latitudes " New Zealand was reached and circumnavigated, and its coast charted with some degree of accuracy. Continuing his voyage westward, Cook sighted the coast of Australia at a point which he named Ram Head from its similarity to a headland of the same name in

[1] For those who wish for fuller information relative to the early voyages of discovery of Australasia, reference should be made to R. W. Giblin's recent book, *The Early History of Tasmania* (1928), particularly Chapters II–IX.

[2] *Banks' Journal.*

Ireland. Landing at a small bay where the vegetation was found to be most varied and luxuriant, Sir Joseph Banks gave it the name of Botany Bay. Here Cook hoisted the English flag, taking possession of the country in the name of His Majesty King George III, and calling it New South Wales. He returned to England by way of the Barrier Reef, Torres Strait, and the Indian Ocean. By this time the outline of the Australian coast was known, except that Van Diemen's Land was still thought to be part of the mainland.[1]

On a second voyage, 1772–5, Cook penetrated far into the Antarctic; and on a third, 1776–9, he revisited Van Diemen's Land and New Zealand, and tried unsuccessfully to find the North-West passage from the Pacific side. On his return voyage in 1779 he was killed by the natives of Hawaii.[2]

V. Effect of American War of Independence

One event of this period had considerable influence on the development of colonization, viz. the loss of the American Colonies. It was even suggested by a certain Matra[3] that the Australian Colonies would prove a suitable place of refuge for the loyal Britishers in America. In 1783 (under the date Aug. 23) he sent a letter to Lord Sydney, the Secretary of State for the Colonies, headed, "A Proposal for Establishing a Settlement in New South Wales." The letter contained a detailed account of the natural resources of the Colony, and of the possibilities of their development. "This country," he tells us, "will afford an asylum to those unfortunate American loyalists whom Great Britain is bound by every tie of honour and gratitude to protect and support, where they may repair their broken fortunes, and enjoy their former domestic felicity."[4] Full details regarding the method of sending out expeditions to the Colony are given; and an attempt is made to alleviate any fears that the Government may have regarding loss of population through emigration. In fact, the whole scheme was admirably worked out. The loyalists, however, were

[1] This mistaken idea was not corrected till 1798 when Dr. Bass discovered the Straits which have since borne his name.

[2] Giblin, *op. cit.*, p. 67.

[3] His history is obscure. He appears to have been of Corsican descent, and was a member of the expedition referred to above sent out to Tahiti to observe the transit of Venus. Cf. an article in the *Journal and Proceedings of the Royal Australian Historical Society*, Vol. X, Part III, pp. 152 ff.

[4] Quoted, *ibid.*, p. 156.

not favourable to so hazardous an undertaking, but preferred the colonization of Canada.[1]

But the American secession did contribute to Australian development in another way. England had for many years previous to this sent her convicts to serve their sentences on the plantations of Virginia and Barbados; but after 1775 their transportation to America became impossible. England then adopted many makeshift schemes, one of them being the confining of criminals in the hulks on the Thames estuary, with the possibility of constant revolts and escapes as these prisons became more congested. Then a plan for penal settlement was evolved, and several sites proposed, among them being the West Coast of Africa, which was rejected on humanitarian grounds as being unhealthy.

Under the powers conferred by the Transportation Act, George III, 1782, an Order-in-Council was issued from the Court of St. James, December 6th, 1786, when New South Wales was first named as a place of transportation. The scheme is summarized in the following passage in the King's Speech at the opening of Parliament on January 23rd, 1787, "A plan has been formed by my direction for transporting a number of convicts in order to remove the inconvenience which arose from the crowded state of the gaols in different parts of the kingdom, and you will, I doubt not, take such farther measures as may be necessary for this purpose."[2]

VI. Expedition under Phillip

In pursuance of this scheme, Sir Joseph Banks proposed that a penal settlement should be established at Botany Bay; and a fleet of convict ships was sent out which arrived there in 1788. The direction of the enterprise was entrusted to Captain Arthur Phillip, an officer who had served with distinction in the navy. This "first fleet" consisted of the *Sirius* and the *Supply*, together with six transports for the convicts, and three ships for carrying the stores. Of the convicts five hundred and fifty were men and two hundred and twenty were women. To guard these, there were on board two hundred soldiers and marines. Second in command was Captain Hunter (afterwards Governor), with Mr. Collins as Judge-Advocate and the Reverend

[1] Williamson: *A Short History of British Expansion*, p. 511.
[2] *Hansard*, Vol. XXVI, p. 211.

Richard Johnson, B.A., as Chaplain. A few free settlers completed the number. The voyage, which was by way of the Cape of Good Hope, occupied nearly nine months

On arrival at Botany Bay, Captain Phillip, dissatisfied with the general conditions of that locality and of the anchorage, set out for Port Jackson—a spot previously marked by Captain Cook; and there, on January 26th, 1788, a day since observed in Australia as Foundation Day, he unfurled the English flag at a point to which was given the name Sydney Cove in honour of Lord Sydney, the then Secretary of State for the Colonies; and to this site, within a week of his arrival, he transferred the whole enterprise. At the moment when Captain Phillip was effecting this transfer, an expedition, sent out by the French Government, under La Pérouse, whose instructions were not only to annex a site on Botany Bay, but also the whole eastern coast from Torres Strait to Van Diemen's Land, hove in sight. The French commander thus found himself forestalled by six days, and after exchanging civilities with Captain Phillip, sailed away and was never heard of again. In 1827 discoveries of wreckage of his two vessels were made by one Captain Dillon at Vanikoro, a small island of the Santa Cruz group.[1] A monument has been erected to his memory at Botany Bay.[2]

VII. Early Conditions in Australia

The task that lay before Captain Phillip was such as confronted no other Englishman of his time—new and strange conditions of climate and environment; the menace of the natives, who though armed only with their own primitive weapons and incapable either of sustained or intelligent resistance to the new-comers were yet actively hostile and troublesome; but above all the anxiety laid upon him in the character of the convicts, the majority of whom were men of most dissolute and depraved nature, lacking all the attributes of industry and decency, and amenable only to the discipline of the lash. Moreover, the women, with few exceptions, were ill-fitted to become the mothers of a new nation that was to occupy this southern land, though, as an historical fact, they had little part in the ancestry of present-day Australians.[3]

[1] Giblin, *op. cit.*, p. 85.
[2] One in honour of Captain Cook stands on the South Headland.
[3] Williamson, *op. cit.*, p. 513 n.

Governor Phillip had only his officers and a handful of marines to control these unpromising pioneers ; but in 1790 the Home Authorities authorized the establishment of a New South Wales Corps to take over this duty, and its officers and men, eventually receiving grants of land, became the first free and genuine settlers of Australia.[1] Phillip remained till 1792, sufficiently long to see the Colony through this anxious period of establishment ; and to his administration, firmness, and discipline can be accredited the averting of disaster and famine. It was not till 1794 that New South Wales was in a position to provide sufficient corn for its needs ; and on more than one occasion, starvation and annihilation, owing to the failure of crops due to the unskilled method of cultivation, were averted only by the timely arrival of food ships. In 1798 the whole Colony is said to have been "actually naked," having neither clothes to wear by day nor blankets in which to wrap themselves at night.[2]

VIII. Growth under Phillip's Successors[3]

Phillip departed in 1792 on furlough, leaving Major Grose in charge until the arrival in 1795 of Captain Hunter[4] to occupy the position of Governor. At the close of Hunter's term of office in 1800 the British Government contemplated the abandonment of the whole transportation policy on account of its heavy cost to the nation ; but the pleadings of Sir Joseph Banks averted this decision.

Captain King succeeded Hunter in 1800, and under his administration, commercial enterprise was greatly developed. It was about this time that free settlers began to arrive, taking up the land and farming it on a productive scale. Private enterprise was beginning to supplant the military control and State rationing of foodstuffs ; and the social organization soon began to lose the entirely military character which it had assumed. Moreover, the staple

[1] *Historical Records, New South Wales*, Vol. III, pp. 167, 170, 217.

[2] Cf. Williamson, *op. cit.*, p. 514.

[3] It may be convenient to give here the date of successive Governors up to 1831.

1. Phillip	Jan. 1788–Nov. 1792	5. Macquarie	1809–1821
2. Hunter	1795–1800	6. Brisbane	1822–1825
3. King	1800–1806	7. Darling	1825–1831
4. Bligh	1806–1809	8. Bourke	1831

Many interesting personal details and character sketches may be found in R. Therry : *Reminiscences of Thirty Years' Residence in New South Wales and Victoria* (London, 2nd edit., 1863).

[4] He had returned to England after the wreck of his ship *Sirius*.

industries of coal, sheep-breeding and wool-growing were started at this time. As regards the latter, John Macarthur, a Captain of the New South Wales Corps, imported sheep from India and South Africa and by careful experiment raised a breed of merino sheep whose progeny produces the finest wool in the world. Trade, however, did not develop as rapidly as might have been expected. The East India Company claimed the monopoly of trade in the Pacific, but did little to turn its privilege to account ; and because of this monopoly, English trade with the Colony was retarded till 1813.

In 1803 Governor King, fearing the colonization of Van Diemen's Land by the French, who after the Peace of Amiens had sent out an exploring mission to the southern coast of Australia, despatched a detachment of convicts with their guards to form a subordinate penal station there. The British Government also had apprehensions of French projects, and feared an occupation by them of Port Phillip. In the same year, one Collins was sent with a large party of convicts, fifty-one soldiers, and thirteen free settlers to form a settlement there ; but he abandoned it in 1804 and transferred his whole command to a site in Van Diemen's Land, which he named Hobart Town in honour of the Secretary of State for the Colonies. In 1806 King was succeeded by Captain Bligh, a seaman, whose courage had been recognized even by Nelson but better remembered on account of his connection with the Mutiny of the *Bounty*.[1] The choice was an unfortunate one, and ended in his expulsion from the Colony in 1808.

The Home Government next sent Colonel Lachlan Macquarie to take over Bligh's office, and under his leadership and definite policy, the ex-convicts were encouraged by grants of land and appointments to public offices to make some effort to regain their self-respect. Many of the freed convicts proved their worth, and amply justified Macquarie's methods. But Macquarie combined with this liberal attitude towards the convicts a narrow policy regarding other settlers. He gave no encouragement to the immigrant. This policy was a failure as subsequent history has shown. The future of Australia belonged, not to the convict, but to the free man ; and though Macquarie's

[1] His harsh treatment of the crew of this vessel led to a mutiny which resulted in his being turned adrift in mid-ocean to take his chance in an open boat.

policy here was a short-sighted one, it is to his credit that he tried, by humanitarian methods, to convert these miserable convicts into reputable citizens.

IX. The Conditions of the Convict[1]

It is essential for the understanding of this early history to remember that the earliest population was drawn almost solely from among the convicts. Many of those who were transported were indeed sent out for offences which were either political[2] or only of the most trivial nature; but there was also among their number a large proportion of thoroughly hardened criminals. In any circumstances, these latter would have exercised a bad leavening effect on the whole lump. So much the more was this the case when the good were forced to live for a period of over six months in closest contact, on board ship, with the criminal class.

There was, however, an officer appointed on the staff of each convict-ship who tended to render the conditions somewhat better than they might otherwise have been; he was the "superintendent" of the convicts. An account of those officers in some detail is given by Therry in the work already referred to. He tells us that they were surgeons of the navy, chosen on account of their meritorious profession, as, in addition to a gratuity of ten shillings a head for the landing of each convict, there were also attached to the position liberal allowances; and there was very considerable competition for these berths. Impartial patronage was exercised in these appointments; and throughout the whole period of transportation, the extensive authority entrusted to these officers was beneficially used in administering to the wants of the convicts confided to their charge. These naval surgeons seem to have performed their duties with firmness and humanity, and for the benefit of the unfortunate persons over whom government gave them a very large discretionary control. Those who seek a more strictly historical, though hardly less interesting account, than that of Therry will find such in Dom Butler's recent biography of Bishop Ullathorne.[3]

Had these superintendents been able to exercise control

[1] A vivid account worked up in narrative form of the convict conditions in Port Arthur and Eaglehawk Neck (Tasmania) is to be found in Marcus Clarke: *For the term of his Natural Life.*

[2] e.g., those evicted from Ireland at this time.

[3] Dom Cuthbert Butler: *The Life and Times of Bishop Ullathorne* (1806–1889), 2 Vols. (London, 1926), Vol. I, pp. 90–116.

over the convicts after their disembarkation, many might have been reclaimed. But the treatment of them suffered among other defects from the absence of any classification of convicts according to age and the nature of their crimes ; and as was to be expected, the herding together of large numbers of the criminal population bore dismal fruits in Botany Bay.[1]

In such circumstances, the maintenance of discipline was no easy matter. The uncontrolled use of the lash was resorted to as an incessant and almost sole instrument of punishment, and, too often, those who inflicted this degrading punishment were irresponsible agents who kept no record of their darkest deeds ; and when the lash had done its work, the scaffold was called in aid. It is recorded that in the years 1826, 1827, and 1830, 153 convicts perished on the scaffold out of a population of less than 50,000, being an average annual estimate for the three years of approximately one man in every thousand.[2]

The worst characters among the convicts were not kept in New South Wales, however. They were despatched to Norfolk Island, some 900 miles east from Sydney, in the Pacific Ocean. The locality appears to have been not unfavourable, but the conditions resulting from a population of the worst criminals were appalling. Others, again, as we have seen, were sent to Van Diemen's Land until they exceeded those on the mainland in numbers. But Therry's description of conditions in Norfolk Island at this date may lead us to doubt if there were anywhere a worse place existing on the globe at that time than this small island in the Pacific.

Once public opinion had been aroused in Great Britain, it was recognized that the treatment meted out to the convicts was as great a blot on its morals as had been the slave trade in earlier times. A Parliamentary Committee, appointed in 1837, revealed the more inhuman features of the system, and recommended the cessation of transportation. There is little doubt that this course was largely determined by continual agitation on the part of the settlers

[1] The generic name given to the penal settlements of New South Wales, Van Diemen's Land, and Norfolk Island.

[2] For the sake of comparison the similar statistics for England and Wales are added : the population of England in 1826 was 12,000,236. In that year there were executed in England 56 persons ; in 1827, 75 persons ; and in 1830, 53 persons, giving an average annual estimate of about one in 200,000.

in the Colony who never ceased to resent the presence of the convicts in their midst. In 1840 an Order-in-Council carried the recommendation of the Parliamentary Committee partly into effect, and directed that transportation to New South Wales should cease. In 1852 the last convicts were disembarked in Van Diemen's Land, but for another sixteen years there were convicts brought intermittently to Western Australia. From first to last, 137,161 men and women were transported.

X. Development subsequent to the Napoleonic Wars

The post-Napoleonic War period, with the bad economic and social conditions in England, naturally led to a considerable increase in emigrants. There were large numbers of ex-soldiers in search of employment, and their campaigns abroad had opened their eyes to a wider vision, and had made them well fitted for emigrants. Consequently the population of Australia rapidly increased. The Government, moreover, gave them every support, and that for two reasons. First, there were fears of French colonization on the Australian Continent, fears which appeared justified when Governor Darling received a report that the French had landed at Western Port in Victoria. An expedition to the spot, however, soon manifested that they had no intention of starting a Colony there ; for they had already left before the English expedition arrived. Secondly, the Government found the settlers of the greatest value in organizing the convict supply of labour. Only a small proportion of the convicts were kept in prisons. Most of them were " assigned " out to settlers, for whom they had to perform compulsory labour. These settlers proved first-rate organizers of this convict labour, and the Government saw they were of great service in turning this labour to good account.

Exploration, moreover, was beginning at this period in the Colony. In 1813 a good track across the Blue Mountains in New South Wales into the Bathurst Plains was discovered by Gregory Blaxland and, a few years later, John Oxley penetrated towards the Murray River. The river itself was actually discovered and crossed in 1824 by Hume and Hovell ; and it was about the same time that Allan Cunningham, the botanist, undertook his excursions far into the interior in the cause of scientific investigation.

XI. Grants of Land

In the earliest times, all property was regarded as vested in the Crown ; and the Crown vested its power of making grants in the Governor. Consequently, if anyone wished to emigrate, he might wait until he disembarked, and then he could be tolerably certain of receiving a grant of land from the Governor. In general, grants were made by him in proportional magnitude to the amount of capital which the Colonist brought with him. It was generally considered advisable to make application to the authorities at home, prior to emigration, for a certificate recommending a grant of land ; if this were obtained (as it invariably was if the applicant were of good character), the emigrant had a legal claim on the land on arrival, whatever the Governor's own personal wishes might be.[1]

After the discovery of the pastoral areas on the far side of the Blue Mountains in 1813, and the nearly contemporaneous introduction of sheep into the Continent, there was a large unauthorized tracking by sheep owners into this new area. The settlers set out with their sheep till they came to a suitable spot and there " squatted " and endeavoured to make a fortune out of wool. Of course, such " Squatters " had no legal rights to these lands, but the Government saw that they made the best use then possible of land lying idle and consequently did not interfere. In 1836, Bourke dealt effectively with the problem created by this general " squatting " and gave the " Squatters " licences for security of tenure within prescribed boundaries.

Macquarie, as has been pointed out, was opposed to any extensive policy of admitting settlers. But all this was soon to change; 1830 saw the formation in England of the Colonization Society. This organization, one of the leading spirits of which was E. G. Wakefield, besides advocating responsible government for the Colonists, urged that a systematic plan of colonization should be brought into effect. It pointed out that there were large areas available for settlement purposes in the Colonies and that at home there was sufficient capital available for their development in Australia. The scheme had the support of Governor

[1] See *Historical Records of New South Wales*, Vol. III, p. 385 (1798). Grants of land to settlers were made of 100 acres at Port Jackson prior to sailing. The immigrants were to be victualled on the voyage and also fed and clothed from the public stores for twelve months after arrival. Stock, seed, grain, and agricultural implements were to be provided for them.

Bourke, who urged that Colonial lands should be not given to, but purchased by, the Colonists, and that the revenue thus obtained be used to assist further immigrants who were without capital. The problem of the supply of labour began to become serious as the number of convicts introduced fell off. It was this far-sighted policy which saved the situation. By selling land at a minimum of £2 an acre, Wakefield showed that it was possible to raise an emigration fund, sufficient to maintain a proper supply of labour.

XII. New Zealand

Something may be said here of the early history of New Zealand. The Islands owe their Dutch name to their discovery by Tasman in 1642. Tasman was unable to land, however, and it was not till 1769 that any real knowledge of the country was obtained. In that year Cook succeeded in effecting a landing at several points and got into touch with the natives, called Maoris. These Maoris appear themselves not to have been the original inhabitants, but to have come from some other islands in the Pacific at an earlier date. As subsequent history showed, they possessed a very exceptional degree of intelligence among the primitive tribes ; they were always a force to be reckoned with ; and unlike the Australian Aborigines, they themselves recognized that the white man was a power not to be scorned. It is somewhat difficult, however, to estimate their exact numbers. In 1839 it was estimated that there were about 100,000 in the North Island and 5000 in the South Island. There was no systematic settlement of the country till about 1840. The white population before that date consisted mainly of escaped convicts, whalers, and traders driven out of their course, and a few Christian Missionaries, amongst whom was Samuel Marsden.[1] By 1839, the year in which the British Government decided to assume sovereignty, there were computed to be in all some 2000 white settlers.

In 1837 the chairman of the newly-formed " New Zealand Association," Sir F. Baring, M.P., introduced a Bill into Parliament " for the Provisional Government of British Settlements in the Islands of New Zealand." Among other things, the Bill arranged for the purchase of lands, as well as for the protection and moral development of the natives. The Bill, however, did not go through the House, and the

[1] Cf. *infra*, p. 41.

"New Zealand Association" gave place to the "New Zealand Land Company." This organization was much more definitely intent on financial interests. They urged the British Government to assert supremacy, not indeed with any thought of the protection of the natives, but solely as they imagined that it would mean an increase in the value of the land. In 1839, accordingly, the Government altered the commission of Sir George Gipps, the Governor of New South Wales, so that New Zealand was included within his jurisdiction. He acted without delay, and sent out Captain Hobson to take possession, and "to establish a settled form of civil government." He made a treaty with the natives at Waitangi, explaining to them that "the shadow would go to the Queen and the substance would remain, and that they might rely implicitly on the good faith of Her Majesty's Government."[1]

This led him in February 1840 to proclaim the Queen's sovereignty over both Islands; and in November of the same year, New Zealand was proclaimed an independent Colony. With the object of continuing to protect the Maoris, he proposed to make Auckland rather than Wellington (the chief settlement of the New Zealand Company) the capital of the Colony—needless to say, to the great dissatisfaction of the white population whose interests were fostered by the "New Zealand Company."

[1] Quoted H. W. Tucker: *Life of Bishop Selwyn* (London, 3rd Edit., 1900), i., 99.

CHAPTER II

THE DEVELOPMENT OF CIVIL LEGISLATION IN AUSTRALIA

I. Original Constitution

THE original constitution of New South Wales was as simple as it was inevitable. All powers, both of legislation and of jurisdiction, were vested in the Governor of the Colony. It is true that in the exercise of these powers, the Governor was limited to some extent by the existing legislation in the Home Country. In this matter, the principle laid down by Blackstone in his Commentaries[1] was generally taken as binding, namely, that " If an uninhabited country be discovered and planted by English Subjects, all the English laws then in being, which are the birthright of every subject, are immediately there in force. But this must be understood with very many and very great restrictions. Such Colonists carry with them only so much of the English law as is applicable to their own situation and the condition of an infant Colony ; such, for instance, as the general rules of inheritance and of protection from personal injuries. The artificial refinements and distinctions incident to the property of a great and commercial people, the laws of police and revenue (such especially as are enforced by penalties), the mode of maintenance for the established clergy, the jurisdiction of spiritual courts, and a multitude of other provisions, are neither necessary nor convenient for them, and therefore are not in force. What shall be admitted and what rejected, at what times and under what restrictions, must, in case of dispute, be decided in the first instance, by their own provincial judicature, subject to the revision and control of the King in Council : the whole of their constitution being also liable to be new-modelled and reformed by the general superintending power of the legislature in the mother-

[1] Section 108, *Commentaries on the Laws of England*, by Sir William Blackstone, Vol. I, 16th Edit., pp. 107, 108 (A. Strahan, London, 1825).

country." But the totally new conditions of the Colony made these provisions of dubious value when cases arose, and though the Governor had to report periodically to the Home Government the progress of affairs in the Colony, to all intents and purposes he had a free hand.

II. Agitation for a Change

It was after the Napoleonic Wars that the desire for a change was generally felt. It expressed itself in three ways—

1. One of the leading Colonists in the year 1819 brought out a book with a view to giving the English public better information on the actual state of the Colony than was usually possessed in this country, in the hope of inducing more emigrants to go out.[1]

Its author, W. C. Wentworth, pointed out the need for some Constitutional form of government, and went so far as to suggest a detailed scheme suitable to the needs of the Colonists. The Government of the Colony was to be vested in two Houses, an Upper and a Lower. The former was to be filled with nominees of the Crown; the latter to be elected by the Colonists themselves. For membership in the Lower House, it was necessary to possess at least three hundred acres of land;—for the right of election thereto it was necessary to possess twenty acres or an equivalent rent qualification. Freed convicts, except those who had been convicted of certain classes of crime, were to be allowed to vote if they had the necessary property qualifications. The introduction of trial by jury was also advocated. The book was reviewed in the *Edinburgh Review* at some length, and attracted much attention in consequence.

2. Independently, the Colonists petitioned the Crown in that year for a less autocratic form of government, Macquarie was not the type of Governor that the Colony needed at that juncture. He persisted in the idea that New South Wales was intended solely for the purposes of a convict settlement, and that, therefore, any others who chose to reside there must not expect any legislation except such as could be applied to convicts. Consequently, he was heartily disliked, and the Home Government had frequently received messages from the settlers petitioning for a change. But it

[1] The book was entitled, *A Statistical Account of the British Settlements in Australasia.* The book is full of interesting material relative to the state of the Colony at this time, and it also gives a full account of the difficulties with which emigrants were then faced.

was in 1819 that a formal petition from a large body of Colonists was first sent.

3. In the same year, the Government, acting on independent advice, decided to send out a Commission to investigate the actual state of the Colony. As head of the Commission, was appointed a London lawyer named Bigge. As his Secretary, there accompanied him a Mr. Scott, who was a few years later appointed the first Archdeacon of the Colony.[1]

But Bathurst took the same view as did Macquarie; for he wrote to Bigge (1819): "They—i.e. New South Wales and Van Diemen's Land—must chiefly be considered as receptacles for offenders. So long as they continue destined by the Legislature of this country for these purposes, their growth as colonies must be of secondary consideration."[2]

The Commission drew up four reports, which were submitted to Parliament in 1822–3. It is worth noting, in view of the part played later by Mr. Scott in the history of our subject, that he was responsible for one of these reports, namely, that on the subject of the need for increased educational facilities in the Colony.

III. The New South Wales Judicature Act, 1823

Within four months of the presentation of Bigge's Third Report to Parliament, on March 23rd, 1823, an Act was passed for the more effectual government of the territory of New South Wales. On the Statute Book, it is 4 George IV, c. 96. Its most important section was Section 24, which provided for the constitution of an "Advisory Legislative Council." Though this Council was to be appointed by the Crown, there appears from the first to have been the intention to appoint to it some of the Colonists, and this was what actually happened. On two of the early Councils sat T. H. Scott, who had, in the meantime, been chosen to fill the new office of Archdeacon. The Council was to consist of not less than five, nor more than seven, members, and the Governor alone was to have the right of initiating Bills. Moreover, such Bills as the Governor initiated were to become law if only *one* member of the Council supported

[1] Cp. p. 42.

[2] Quoted in E. Sweetman: *Australian Constitutional Development* (Melbourne, 1925), p. 32. For much in this chapter we are indebted to that valuable work.

them. In times when the Colony was deemed by the Governor to be imperilled, not even the support of this one member was necessary; so it is doubtful if, in fact, the power of the Governor was much curtailed by this new Act. Still, it was highly important as showing that the Home Government was aware that there must come a change.

Provision was also made by the Act for the establishment of a Supreme Court to try civil offences. The old Court of seven military and naval officers was to continue for the trial of convicts (Section 4). But by Section 6 of the Act, in certain cases trial by jury should be the rule, and Section 8 provided for the extension of the principle as soon as the Colony was deemed fitted for it.

In the same year, Letters Patent were issued, dated October 13th, for the creation of this Court. It was to be under the control of one judge, entitled the Chief Justice. If His Majesty wished, however, he could increase the number of judges to three. As regards its powers, it could exercise "such and the like jurisdiction as the superior Courts of Westminster in all civil and criminal matters." It was also given equitable jurisdiction, such as the Courts of Chancery in England exercise, as well as such portion of the jurisdiction as the Ecclesiastical Courts of England then possessed relative to the probate of wills and the granting of letters of administration. Sir Francis Forbes was the first Chief Justice to preside over this Court.

Such were the new conditions created by the 1824 Act. Up till this date, Australia had been, in the eyes of the law, purely and solely a penal settlement. Now the English Government began to recognize that a tremendous future awaited this outpost of the Empire. The beginnings of that new era had become manifest. They were not to culminate till the Commonwealth of Australia Constitution Act, which established the Federal Constitution in 1900, was passed; and on January 1st, 1901, the Federal Commonwealth came into being.

IV. An Example of Colonial Legislature

An example of the type of legislature which the Colonial Council passed may be given here. We select an instance bearing on the history of the Church, namely, the first Licensing Act. The Australian Acts are usually quoted by "Numbers" and not by "Chapters," and hence it is

designated 6 George IV, No. 4, and not 6 George IV, Cap. 4. There was required from all applicants for licences a certificate by the Church of England "minister." There appears somewhat later on the Statute Book (6 George IV, No. 21) an Act passed for the Registration of Births, Marriages, and Deaths, which also recognized the official position of the Church of England clergy in charge of parishes. Every minister of religion in the Colony, of whatever denomination, was compelled to send a certificate of any baptisms, marriages, or burials which he solemnized, to the Anglican minister of the parish in which the service took place; and delinquents were to be visited with severe penalties. It would thus appear that, at this early date, an attempt was made to give the Church of England a degree of recognition not accorded to any other denomination. It must, however, be pointed out, that the scheme proved impracticable, and it was later replaced by one which gave official recognition to four religious bodies.

V. Van Diemen's Land a New Colony

Van Diemen's Land tended more and more to become the convict Colony *par excellence*. Since 1803, the year of its foundation, it had been under the control of a Lieutenant-Governor, who was himself subject to the Governor of New South Wales. The time was now ripe for the establishment of Van Diemen's Land as a separate Colony. Accordingly, an Order in Council, dated June 14th, 1825, was issued, establishing for that Colony a legislature parallel to that of New South Wales; provision being made for a Governor and Council nominated by the Crown. The Imperial Acts of 1842 and 1850 granted the Colonists power to nominate or elect the members of the Legislative Council, and Tasmania (as well as Victoria and South Australia) decided on the "elective" principle; and for the Lower House, i.e. the Legislative Assembly, the method of election of members is by an adaptation of the Hare System of proportional representation involving the multi-member electoral division. This system was invented by a certain Miss Hare of South Australia; but so far, Tasmania is the only State, which, by its use, makes provision for the representation of minorities.[1]

[1] *Federal Handbook on Australia* (British Association for the Advancement of Science), 1914, p. 551.

VI. The Need of Further Reforms

The provisions of the 1824 Act were clearly intended to be more or less of a temporary nature. The Colonists themselves generally felt that their wishes had been only very imperfectly acceded to. Almost before they had become acquainted with the terms of the Bill, agitation began for further reforms. In 1825, Wentworth, in conjunction with a friend, Dr. Wardell, started a paper called the *Australian*, to be devoted to the cause of freedom. The party was determined on active steps; and, at a farewell meeting given on October 21st, 1825, to the honour of Brisbane, he was implored to use all the influence he could in the Home Country for the extension of the principle of Trial by Jury, and the introduction of Taxation by Representation.[1]

Somewhat over a year later,[2] Governor Darling addressed a letter to Under-Secretary Hay, pressing the need for greater Constitutional government. He suggested the creation of a blended House, and put forward two schemes; in the one, proposing 15 and in the other, 20 members of this House. Thus, in the former scheme, the House was to consist of the Lieutenant-Governor, the Chief Justice, the Archdeacon, the Colonial Secretary, the Attorney-General, the Surveyor-General, the Auditor of Accounts, six country gentlemen, and two merchants.

VII. The 1828 Bill

These proposals resulted in a new Bill. It was introduced on April 1st, by Huskisson, who was at that time the Secretary of State for the Colonies. It had the somewhat long title, "A Bill to provide for the Administration of Justice in New South Wales and Van Diemen's Land, and for the more effectual Government thereof; and for other purposes relating thereto." The Crown was authorized to introduce trial by jury for "all crimes cognizable by juries." For any Colonial Bill to become law it was henceforth necessary for the Governor to have a majority vote in the Council and not simply the consent of one member. The Bill received the Royal Assent on July 25th, 1828, and not long subsequently—in 1832—the Crown gave to Governor Bourke its consent to introduce Trial by Jury. It is also interesting to note that the composition of the

[1] Sweetman, *op. cit.*, p. 60. [2] February 9th, 1827.

Legislative Council was practically that proposed by Darling.

VIII. New Colonies, Western and South Australia

Settlements were started on the West Coast of Australia in the year 1829. It was quite impossible for the legislative body in New South Wales to govern this Colony on the Swan River. Hence, an Act was passed which empowered the Crown to appoint persons to make laws for this Colony until December 31st, 1834. Eventually in 1889, Western Australia acquired responsible government with its Constitution based substantially on that of New South Wales, except that the members of the Legislative Council are elected and not nominated to that office, and receive a salary in the same way as do the South Australian and Tasmanian members of their respective legislatures.

By the Imperial Act 4 and 5 William IV, Cap. 45, the Crown was also empowered to erect South Australia into a British possession and to provide for its colonization. This led to the formation of the Colony of South Australia (1834). The executive and legislative powers of the Colony were vested in the Governor and a Council of Government in just the same manner as in New South Wales.

IX. The 1842 Act

The next important event in the history of the Constitution was the passing in 1842 of the Act 5 and 6 Vict., Cap. 76. It provided for the creation of a Legislative Council, constituted on a new basis. The majority of its members were to be, not Nominees of the Crown, but representatives elected by the Colonists. As the basis of franchise, the property qualification was taken. It took, therefore, well over twenty years before the Home Government gave effect to the proposals put forward by Wentworth in his famous book.[1] This Council was given control of the Colonial expenditure and revenue; the only exception made was in the case of the Land Fund which was deemed to require the guidance of experienced statesmen such as the Colony at that time did not possess.

One important proviso in the Act should be noticed. All the legislature in the Colony was subject to the veto of the Governor. We see here a reflection of Lord Durham's *Report on the Affairs of British North America*. Durham,

[1] Cp. p. 30 n.

it will be remembered, had been sent out in 1838 as Governor of Canada, and the report which he sent back was strongly coloured by his own views. He regarded the Colonies not so much the inheritance of the present Colonists as the destined home of the crowded masses in this country. "They were," he said, "the ample appanage which God and Nature have set aside in the New world for those whose lot has assigned them but insufficient portions in the Old."

X. The Separation of Victoria

It was inevitable that a separation between New South Wales and Victoria should come about. Owing to the situation of Melbourne, travel by land between the two capitals was even more difficult than by water; and, in practice, the Colony at Port Phillip was an Overseas dependency of New South Wales.[1]

Though it was not till nearly ten years after the 1842 Act that this state of affairs was remedied, that Act clearly recognized the situation. By it, not only was a completely independent Land Fund set up for the southern Colony, but it also granted to Victoria the right to elect and send six members to the New South Wales Legislature. On paper, the latter might seem to be a liberal concession; but in practice, it really amounted to very little, since it was not possible to induce the right class of representatives to undertake the expenses and inconveniences which the journey to Sydney involved. The irony of the whole position is seen in the fact that, in 1850, Lord Grey, the Colonial Secretary in England, was actually elected as the representative of Melbourne.[2]

It was in 1850 that effect was given to the necessary changes. By the Imperial Act, 13 & 14 Vict., Cap. 59 (August 5th, 1850), the land on the two sides of the Murray River became each a separate Colony. Like New South Wales and South Australia, Victoria was granted a Legislative Council, partly nominee and partly elective. On July 1st, 1851, formal effect was given to these proposals. It is remarkable how opportune was the moment for this change, for the population of Victoria went up by leaps and bounds in the next few years, consequent on the discovery of gold.[3] From 1855 to 1890, emigration from Great

[1] Cp. G. Goodman: *The Church in Victoria during the Episcopate of Bishop Perry*, pp. 149 ff. [2] *Ibid.*, p. 150.

[3] The population of Victoria in 1851 was 70,000; in 1855, it was 333,000. Williamson, p. 525.

Britain continued in considerable volume,[1] and during the 'seventies, after the gold-fever had subsided, that Colony was settling down to the stable and permanent pursuits of the pastoral and agricultural industries. So rapidly did these flourish and extend that the demand for more land for settlement purposes became greater, until to-day, Victoria, owing to the varied and productive resources of the country, is in a more highly developed condition of settlement than any of the other states.

XI. Colony of Queensland

The spread of settlement in the northern portion of New South Wales led to the formation, in 1852, of the New Colony of Queensland. The growth of population, it is true, was slower than for the corresponding period in Victoria, and hence the necessity for a separate government arose only later. But when there were some 30,000 inhabitants centred mainly in the areas round Brisbane,[2] the demand for the establishment of the Colony was granted.

The Constitution of Queensland followed that of the parent Colony of New South Wales, and the members of its Legislative Council were appointed by nomination; though, some few years ago (March 23rd, 1922), a most revolutionary constitutional alteration was made, when the Legislative Council was abolished entirely at the instigation of the Labour Government then in power.

XII. Functions of the Legislative Councils and Legislative Assemblies

The Constitutions of the several States, with the exception of that of Queensland (as noted above), provide for two Chambers. The functions of the Assemblies (or Lower Houses) are purely legislative and democratic in basis, and in their control of Ministers of the Cabinets, their limited term of office, and their liability to dissolution, follow closely the constitution and procedure of the British House of Commons. The fundamental factor of responsible government existing in the Legislative Assemblies of the State Parliaments of Australia lies in the harmony of the Cabinet with the majority opinion of the Lower House.

[1] In 1890, the population of Victoria was 1,118,500.

[2] The foundations of this city, as we have seen, had been laid in 1824, during the term of office of Governon Brisbane, who at that time had established a penal settlement there.

We have seen that the Legislative Council was the first form of local government granted to the Colony, but after responsible government took the place (between 1855 and 1889) of the earlier method, the Constitution of the Legislative Councils throughout the various Colonies differed somewhat in composition and method of election; and, designed as conservative bodies, they have certainly fulfilled the controlling function of a Second Chamber exercising its revisory power (when it considered it advisable) on the legislation sent to it by the Legislative Assembly.

XIII. The Federal Government

As we have seen, the federation of the States of Australia was accomplished in 1901. The Federal Parliament consists of a House of Representatives, and an Upper House, designated the Senate, the members of both Chambers being elected on the basis of proportional representation from the whole of the Commonwealth.

The legislative functions of the Federal Parliament are those which concern Australia as a whole, in such matters as Defence, Post Office, Customs, Tariffs, and Administrative problems.

Thus, Australia, with its Governor-General of the Commonwealth, its Federal Parliament, its six State Governors, and the corresponding number of State Parliaments, totalling, in all, thirteen Parliamentary bodies, may either pride or pity herself on the multitude and variety of her legislative experiments, and can claim, with no danger of challenge, to be the world's political laboratory, even though it has to govern only six millions of people!

CHAPTER III

THE HISTORY OF THE AUSTRALIAN CHURCH

I. Beginnings of the Church

IN Australia, the history of the Church is as old as the history of the Colony; for the first fleet that left the English shores with its freight of convicts was provided with the ministrations of a Chaplain in the person of a certain Richard Johnson. It would appear that the ships might easily have left without the presence of a minister to the spiritual needs of the convicts, for an early historian writes: "The first ship which bore away its freight of despair,—of bruised hearts and woeful memories and fearful expectations,—would have left the shores of England without even a solitary minister of religion but for the timely remonstrance of a private individual. The civil authorities deemed their work complete when they had given the signal to raise the anchor and unloose the sails; the rest was no concern of theirs."[1]

The writer who quotes these words tells us that the individual referred to is Bishop Porteus, who together with Sir Joseph Banks recognized the necessity of a "religious instructor" being provided for the unfortunate prisoners.[2] Another version of Mr. Johnson's appointment[3] tells us that, just two days before the convicts sailed, William Wilberforce, finding that no provision for the spiritual welfare of the convicts had been made, represented his views to the Bishop of London, whose counsel to the Government resulted in the appointment of Johnson, who volunteered his services.

It should be noted, however, that Johnson's commission is dated as early as October 4th, 1786, seven months before the first fleet left the English shores on May 13th, 1787. Furthermore, a presentation of books was made by the

[1] T. W. M. Marshall: *Christian Missions*, Vol. II, p. 81.

[2] R. Therry: *Reminiscences of Thirty Years' Residence in New South Wales and Victoria* (London, 2nd Edit., 1863), p. 12.

[3] *Two Hundred Years of the S.P.G.*, 1701–1900, C. F. Pascoe, 1901, p. 386.

S.P.C.K. to the Chaplain of the " first fleet " for New South Wales on November 18th, 1786. It seems, therefore, that the appointment of the Chaplain had been included in the government scheme of transportation.

The first Chaplains were appointed by the State. It follows that they were all Anglicans. They were to exercise their office throughout the new Colony, for we read in Johnson's Commission : " We do by these presents constitute and appoint you to be chaplain to the settlement within our territory called New South Wales."[1] It may be worth noting that Lord Sydney was Secretary of State for the Colonies at the time of Mr. Johnson's appointment.

In this way it was natural that the Church of England should be the one and only Church which received any official recognition, both at home and in the Colony, in the early history of New South Wales.

The famed and heroic labours of Mr. Johnson's successor must not be allowed to eclipse the first Chaplain's work. The task of the latter was no easy one. Within a fortnight of his arrival, he conducted a service under a tree on the western side of Sydney Cove. This was the first service in the Colony, and on that memorable occasion he chose for the text of his sermon, " What shall I render unto the Lord for all His benefits towards me ? "[2] To it, came the marines, the seamen of the vessels, as well as the male convicts.[3] Services continued to be held under trees till the completion, in 1793, of the first church (if one may so designate it), which Mr. Johnson had erected at his own expense.[4] It was a small T-shaped building constructed of stout posts interwoven with branches of ti-tree and bound together with clay, or, as it is generally called, wattle-and-daub.[5]

In spite of the mean materials used in its construction, it was capable of accommodating 500 people, and was also used as a school for about 150 children. But it was not destined to last long, for five years after its erection it was destroyed by fire. The site has been verified beyond dispute, however ; and as recently as March 29th, 1925, the foundation stone of a Memorial Cross was laid on the spot. On

[1] Cp. Document A. [2] Psalm cxvi. 12.

[3] The female convicts were not landed at that date.

[4] He was, however, refunded the cost of it—£67—during Governor Hunter's term of office, in 1797.

[5] It is interesting to note that this was the material of the first historical church in our own land, at Glastonbury. Cf. Wakeman : *History of the Church of England*, p. 3.

April 4th, of the same year, the handsome obelisk which now surmounts it was unveiled in the presence of the Governor, Sir Dudley de Chair, and stands in the busiest thoroughfare of Sydney as a permanent witness to Mr. Johnson's labours. His term of office was not a happy one. It is recorded that he received little support or sympathy from the authorities,—"only a bare toleration at best; more commonly a frown and a hard word for the solitary priest of the Church of England."[1]

Johnson returned to England in 1800, and became Rector of St. Mary, Aldermary, and of St. Antholin, City of London. He died in 1827.

II. Appointment of Samuel Marsden

As the Colony increased, it was naturally impossible for a single Chaplain to do all the necessary work. Before long, an Assistant Chaplain, Mr. Samuel Marsden, was appointed to help Johnson in his duties. His selection is said to have been due to the recommendation of William Wilberforce,[2] and the wisdom of his choice was clearly shown by the later deeds of Marsden, whose strong personality soon made a great impression. His commission was dated January 1st, 1793. He had not been long in the Colony before Johnson resigned, leaving Marsden "to carry on, single-handed, for many years a most determined struggle against the vilest imaginable iniquities, the grossest abuses of authority, and the most shameless licentiousness shielded by official influence. As a sure consequence, he provoked the virulent opposition of powerful and unscrupulous adversaries—men interested in maintaining the abuses he exposed—who strove for years, though happily without success, to blacken his character and drive him from the Colony. The story is one of painful interest. Suffice it to say that Samuel Marsden, though not distinguished by brilliant abilities or literary power, was a man of singular strength and energy of character, of intrepid resolution and indomitable perseverance, joined with an admirable singleness of purpose and largeness of heart. With ardent philanthropy, moreover, he combined an ample measure of those qualities for which Yorkshiremen are famous all the world over—practical sagacity and shrewdness, and strong common

[1] *The Church in Greater Britain*: G. Robert Wynne, D.D., 1911, p. 72.
[2] Cp. H. Jacobs: *New Zealand, Colonial Church Histories*, p. 2.

sense."[1] Marsden returned to England for two years in 1807, and determined to devote his main energies, for the future, to the conversion of New Zealand under the auspices of the C.M.S. It was not, however, till November 1814 that he was able to make his first missionary visit to New Zealand. Marsden died on May 12th, 1838, and was buried in his own churchyard at Paramatta, New South Wales, at the age of seventy-four years.

III. Development of the Church till 1824

The growth of the Church followed the growth of the Colony. The circumstances were indeed such as to render the progress of religion but slow. In a community in which such a large proportion of its members were drawn from the criminal classes, it was no easy task to inspire high religious and moral ideals, and it is greatly to the credit of the first Chaplains that the Church in Australia owed such vitality as it possessed in early times. There were only three Chaplains in the Settlement during the first ten years of its history. Reference has already been made to Johnson and Marsden; the third was the Reverend James Bain, who was appointed in 1790, just four years previous to the arrival of Marsden. Little is known of Bain; his name appears in the register of St. John's Church, Paramatta, and Johnson refers to him in a letter dated March 15th, 1793, written to S.P.G. In this communication, Bain is mentioned as "Chaplain to the New South Wales Corps."[2] In January 1792, he embarked on board the *Queen* for Norfolk Island with some settlers and convicts.

The year 1824 saw the appointment of an Archdeacon[3]; who, though under the Governor or Lieutenant-Governor, ranked next to them in the Colony, and under whose supervision the Chaplains, Church Services, and Educational System were organized.

Thomas Hobbes Scott was the first to fill this office. The son of a clergyman, in 1813 he matriculated at Oxford, and took his M.A. degree five years later. Before his appointment to the Archdeaconry he had had a varied career. He had held a position in the Consular Service in Italy; he had been a wine merchant; he had been out to

[1] Cp. H. Jacobs: *New Zealand, Colonial Church Histories*, pp. 2 f.
[2] *Two Hundred Years of the S.P.G.*, p. 387.
[3] *Register of Acts and Proceedings, Archdeaconry of New South Wales in Diocese of Calcutta.* This Register is to be seen at the Diocesan Registry, Sydney, N.S.W.

the Colony as Secretary of Bigge's Commission which the Government appointed to investigate the conditions in New South Wales. On his return to England he took orders and was instituted Rector of a Northumberland parish in 1822. The fact that he placed a *locum tenens* in the parish suggests that he intended to remain in Australia for only a limited time.[1] Scott's experiences, therefore, were wide and varied, and even if some of his activities were not such as we are accustomed to associate with a clerical career, the peculiar circumstances of the Church in New South Wales demanded at this time a man of his stamp. Shortly after his arrival the Archdeacon held his first Visitation at Sydney, in June 1825. At this time the number of Chaplains on the Government Staff, including the Archdeacon, was eleven, all of whom attended the Visitation. They were (excluding the Archdeacon) the Reverends S. Marsden, W. Cowper, R. Cartwright, H. Fulton, R. Hill, J. Cross, G. A. Middleton, T. Reddall, F. Wilkinson, and T. Hassall.

On March 2nd, 1826, the Archdeacon held his first Visitation at St. David's, Hobart Town, Van Diemen's Land. The following Chaplains attended :—the Reverends J. Youl, W. Bedford, W. Garrard, H. A. Robinson, and R. Knopwood. On September 6th in the following year another Visitation was held by the Archdeacon, when three additional Chaplains attended, namely, the Reverends M. W. Meares, J. E. Keane, and C. R. N. Wilton.

To the events which led to the appointment of an Archdeacon, we shall return below. Scott, however, held the office till 1829, in which year William Grant Broughton was appointed by the Duke of Wellington as his successor.

IV. Archdeacon Broughton

The story of the life and work of Archdeacon, afterwards Bishop, Broughton will always command an important place in the history of the Australian Church.

He was born in Bridge Street, Westminster, in 1788, and six years later the family removed to Barnet, Herts. He was educated at King's School, Canterbury, and for a time served as clerk in the East India House, eventually going

[1] On resigning the Archdeaconry, he returned to his former parish. He was made an Honorary Canon of Durham, October, 1845. He died in 1860. For further details, see *Historical Records of Australia*, Series IV, Vol. I, p. 948. Cp. Sweetman : *Australian Constitutional Development*, p. 31.

up to Cambridge at the age of twenty-six. He graduated at Pembroke as sixth Wrangler, and, in 1818, at the age of thirty years, was admitted to Holy Orders.

For the next eleven years he held the curacies of Hartley Wespall and Farnham, Hants, and his literary abilities attracted the notice of Bishop Tomlin of Winchester, who designed high preferment for him. The Bishop was not alone in his recognition of Broughton's work, for the Duke of Wellington, whose seat, Strathfieldsaye, was near to Hartley Wespall, sought out the young priest, and offered him the Chaplaincy of the Tower, an office he accepted and held in conjunction with his curacy. In 1829 the Duke, recognizing Broughton's capacity for leadership, offered him the Archdeaconry of New South Wales, then recently vacant owing to the resignation of Hobbes Scott.

This was the turning-point in Broughton's life; and subsequent history has shown the wisdom manifested by the Duke of Wellington, who saw what type of man was needed for the Church in Australia.

The manner in which the offer was made is to be seen in an address by Broughton to the S.P.G. in 1852.[1] In making the offer, the Duke said: "If, in *my* profession, a man is desired to go to-morrow morning to the other side of the world, it is better he should go to-morrow or not at all." He desired that Broughton should take the subject into his serious consideration, and give him his reply within a week. At the same interview, the Duke used the oft-quoted and now historic words in speaking of the Australian Colonists, "They must have a Church!"

Within the week, he received Broughton's acceptance of the Archdeaconry; and in the words of Broughton himself, when addressing the meeting referred to above, we read—"hence my connection with the Colonial Church."

For seven years he served the Church in this capacity. Towards the end of that period (1834) he visited England, in order to press the claims of the Colonists upon the members of the Church at home,[2] and he asked "whether England was going to allow Australia to become a nation of infidels."[3] "Even for your prisoners," proclaimed Brough-

[1] Printed in W. G. Broughton: *Sermons on the Church of England*, London, 1857. In the prefatory Memoir by B. Harrison, p. xiii.

[2] G. R. Wynne states, cp. *Church in Greater Britain*, 3rd Edit., p. 74, that the Duke of Wellington called the Archdeacon home to be consecrated Bishop of Australia.

[3] Quoted *op. cit.*, p. 75.

ton, " you are bound to provide food and light. Is it not equally your duty to furnish them with the Bread of Life and the Light of the Gospel ? "[1]

So powerful was his appeal that no less than £13,000 was subscribed by the S.P.G., the S.P.C.K., and private individuals ; and as a result, he was able to double the number of clergy in the Colony,—the S.P.G. sending, in one year, no less than thirty clergymen for service in New South Wales and Tasmania.[2] Broughton moreover, during this visit, reminded the people in England that, during the years 1826–1834, the mother-country had not contributed a shilling for the spiritual needs of the convict population, which, at that time, numbered 25,000,[3] while the Colonists themselves were contributing £3000 a year, and furthermore, that the members of the Church of England in the Colony of New South Wales had engaged to contribute, and to a great extent, had paid up, within one year, upwards of £13,500 for Church extension. Sydney, alone, had, at this time, a population of 20,000, of whom 3500 were convicts.[4]

Broughton's story of these conditions in the far-off Colony aroused such widespread interest that plans were immediately formulated for erecting the Archdeaconry into a Bishopric, and, naturally, the choice of the first Bishop fell on Broughton.

V. An Australian Bishop

Archdeacon Broughton was accordingly consecrated Bishop of Australia in the Chapel of Lambeth Palace on February 14th, 1836, and he left England to take up his new task refreshed with help and fortified with new authority.[5]

The outstanding features of his Episcopate, apart from his strong personality and devotion to duty, are to be seen in his vigorous and thorough Churchmanship, and in his staunch belief in Church School Education.

He was, as Bishop, a member of the Legislative Council of the Colony. On one occasion he appealed to the Governor

[1] Quoted *Here and There with the S.P.G.* (First Series, 3rd edit.), p. 15.
[2] *Mission Heroes* : S.P.C.K. ; *Bishop Broughton*, p. 10.
[3] *Ibid.*, p. 9.
[4] G. R. Wynne, *The Church in Greater Britain*, p. 76.
[5] The title " Bishop of Australia " was laid aside in 1847 when new Letters Patent made Broughton Bishop of Sydney with metropolitical powers.

against the injustice of treating the Church of England as merely one of the Protestant sects.

A proposal (1839) that the State should provide £4000 a year for education, dividing it in the proportion of three parts for all Protestant children and one part for Roman Catholics,[1] was, through his influence, effectively negatived. Church School education was a vital part of his work, and he stoutly defended this policy all through his Episcopate.[2]

He never gave a "confirmation address," as we understand the term to-day, but spoke to each candidate personally, at the conclusion of the service, and he frequently remained many days in the one place, giving instruction to the candidates before the Confirmation itself. His generosity, exercised even to the point of sacrifice towards the Church he served, is to be seen in the frequent voluntary surrender of part of his income, in order that other bishops could be consecrated to meet its rapidly increasing and urgent needs. His episcopal abode was, at first, a second-rate hotel, and, afterwards, a miserable and high-rented house. As Bishop of Sydney he had £2000 a year; and in 1847, to facilitate the erection of the new Sees of Newcastle and Melbourne, he surrendered one-half of this sum; so that his income, towards the close of his episcopate, was considerably less than it was when he arrived in the Colony as Archdeacon.

There is no need to dwell here upon his leadership as Chairman of the Sydney Conference in 1850; his whole heart was given to the furtherance of its objects.

He left for England in 1852 in order to obtain, by Royal Licence, liberty for the Clergy in Synod, and for the Laity in Convention, in accordance with the Resolutions passed at the late Conference. He voyaged by way of Panama and South America; and after a calamitous passage from the West Indies, having lost the captain, purser, one of the engineers, and several men, chiefly by yellow fever, he arrived in England on the very day of the funeral of the Duke of Wellington, November 19th, 1852.

In February of the next year he contracted bronchitis, and died on February 19th after a fortnight's illness, in the

[1] "The (Church of England) Schools, which, if your Excellency's plan be carried, must be abolished, are to her as her right hand, by means of which she is to execute the work which is given her to do."—Cp. *Church Standard*, Oct. 26th, 1917, p. 6. Also Document G.

[2] The King's School, Paramatta, was, obviously, so named after his own school, King's School, Canterbury.

sixty-fifth year of his age. He lies buried in Canterbury Cathedral.

Bishop Broughton must ever remain a noble and pre-eminent figure, if not one who stands quite alone, in the annals of the Colonial Episcopate of the nineteenth century.[1]

VI. The New Bishoprics of 1847

The year 1847 saw the establishment of no less than three new Sees,[2] namely, those of Melbourne (Victoria); Newcastle (New South Wales); and Adelaide (South Australia). Broughton was instituted Metropolitan of Australasia and Bishop of Sydney. The first occupants of all three Sees were men of considerable force of character; and the biography of each of them is consequently good reading.[3] Perry and Short were very definitely Evangelical and High Church in their respective outlooks, and the impress of their views is traceable in the theological temper of the two Dioceses even to the present day.

VII. Bishop Perry

Charles Perry (1807–1891) was a brilliant scholar. After leaving Harrow, he graduated at Cambridge in 1828 as Senior Wrangler,[4] and for a short time read for the Bar, though he soon discovered that a legal career was not to his liking. Before his appointment to the See of Melbourne in 1847 he had not worked in the Colony, but had spent most of his time as Fellow and Tutor of Trinity College, Cambridge, after his admission to Holy Orders by the Bishop of Ely in 1837. While at Cambridge, he came under the influence of the Reverend C. Simeon, a priest, who at that time was exercising a remarkable influence for good in the town as well as in the University.

It is not surprising that such an Evangelical as Perry should have been a friend and disciple of Simeon.[5] In 1842, Perry was appointed incumbent of St. Paul's, Cambridge, a position in which he served until he was recommended by

[1] A Biography of Broughton, by F. Whitington, Archdeacon of Hobart (Tasmania), has been in course of preparation for some years. This much-needed work will be greatly welcomed.

[2] For a complete list of the Australian Bishoprics with the dates of their foundation and their respective Bishops, see Appendix.

[3] i. *The Church in Victoria*, by Canon G. Goodman;
ii. *Life and Labours of William Tyrrell, D.D.*, by R. G. Boodle;
iii. *Augustus Short, First Bishop of Adelaide*, by F. Whitington.

[4] Goodman, *The Church in Victoria*, pp. 33 and 52.

[5] *Op. cit.*, pp. 34, 56, 58.

Henry Venn[1] to Earl Grey, Secretary of State for the Colonies. Perry's appointment was made by Grey, acting in communication with Archbishop Howley and the Bishop of London as members of the Colonial Bishoprics' Fund; and he was consecrated first Bishop of Melbourne on June 29th, 1847, at Westminster Abbey. Three months later, he sailed for Australia.

When he arrived in Melbourne, at forty years of age, some doubts were felt as to his fitness for work amidst surroundings so new and different from any of his previous experience. Yet every year of his long episcopate of twenty-nine years only demonstrated the wisdom of his selection, particularly as an ecclesiastical statesman.[2] On his arrival he found the conditions of life in general far from satisfactory; he had but six clergy and three catechists under his superintendence, and of these, three were fellow-passengers with him from England. But with a firm resolve and steadfast purpose, he set himself to his great task. In those early days, a bishop travelled throughout his diocese mainly by road; there were few railways, and not many good roads; and the territory within Perry's Diocese was no exception. After the labour and effort of many years, he succeeded in dividing his Diocese and in founding that of Ballarat, which contained an area of nearly one-half of the whole State. He seems to have regarded this work as the crowning effort of his long episcopate, and after a Bishop had been appointed to the new Diocese, Perry began to prepare for his own retirement, and as he was approaching seventy years of age he returned to England, and resigned in 1876. Queen Victoria recognized his work in Melbourne and Victoria by making him Prelate of the Order of St. Michael and St. George. He lived for many years in England, and for some time was Canon of Llandaff. He died in 1891 at the age of eighty-four years.

VIII. Bishop Tyrrell

William Tyrrell (1807–1879) was born at the Guildhall, London, where his father held the office of City Remembrancer. He was educated at Charterhouse, and afterwards graduated at St. John's, Cambridge. Leaving there he commenced to read for the law, but soon discovered (as Perry did) that the legal profession did not

[1] Secretary of the C.M.S., and Perry's friend of his University days.
[2] Cp. *infra*, pp. 83–90.

appeal to him, and he decided to be ordained. At Cambridge, he made a life-long friendship with Selwyn of New Zealand, who, after his consecration, invited Tyrrell to accept the office of Archdeacon in his (Selwyn's) Diocese. The offer was declined, and Tyrrell remained at his post as incumbent of Beaulieu, in Hampshire, until 1847, when Archbishop Howley (to whom Tyrrell was known only by repute) asked if he would consent to being nominated to the Crown for the Diocese of Newcastle, New South Wales. Tyrrell responded, and he was consecrated Bishop of Newcastle at Westminster Abbey on the same day as Perry and Short.

Shortly afterwards, he sailed for his diocese, and never once returned to England after his appointment.

Tyrrell lived and died a celibate, and is buried at Morpeth, in the Diocese of Newcastle,[1] the scene of many of his labours, and where he presided at the first Synod in his diocese. He was not so endowed with literary gifts as Perry; but in their place possessed charm of personality, devotion to duty, and sympathetic interest in the well-being of his clergy. He was a good horseman, and during his episcopate, practically all his Visitations of his huge diocese, involving hundreds of miles of travelling, were made on horseback. In his will he left a princely sum of money which he estimated would eventually realize a capital amount of £250,000 for diocesan purposes; and though his successor, Bishop Pearson, retired shortly after his appointment, broken down in health and mind by the temporary failure of his predecessor's munificence, these endowments still exist and flourish to-day.

IX. Gold

The discovery of gold in Victoria in 1850 was a crisis for the Church no less than for the Colony. It had three highly important effects on the history of the Church :—

i. The great increase in emigration.[2] Nearly all classes of society—except the clergy—were attracted to the Continent, consequently a decline in the number of clergy in proportion to the population resulted. Perry soon grasped the seriousness of the situation, and his journey to England in 1852 was largely concerned with this question. He appealed to the Missionary Societies, and

[1] On Bishop Tyrrell as an administrator, cf. pp. 103–111 and Chapter X.
[2] The population in the years 1850–1852 rose from 77,345 to 150,000.

succeeded in inducing several other clergymen to return with him.

ii. It resulted in a great shifting of the population. It meant that such clergy as there were, were not to be found in the most advantageous positions. Since definitely parochial organizations had been built up, often only after many years' labour, it was no easy matter for the Church to transfer her activities to those places where her ministrations were most needed.

iii. It meant a deterioration in the ideals of the people. In men who were willing to abandon their ordinary occupations in the hope of success in the gold areas, there arose a spirit of restlessness which was anything but favourable to the growth of religion. And still more difficult was it to create enthusiasm for religion in people whose purposes were frankly materialistic. It took several years before the immigrants were again of a class who felt the needs of the ministrations of the Church.

X. Bishop Nixon

As far back as 1803, Tasmania was made a convict settlement, but the Church cannot claim such an early date for its beginnings there, though the first chaplain to the convicts arrived in 1804. We have seen that Archdeacon Hobbes Scott held two visitations in the Colony then known as Van Diemen's Land. Broughton also visited this part of his territory ; and soon after his appointment as Bishop of Australia, a new Archdeaconry was formed for Van Diemen's Land, in March 1836, to which Broughton collated the Reverend William Hutchins, one of his contemporaries at Pembroke, Cambridge, and a Wrangler in the same tripos as himself.[1]

In 1842, the Bishopric of Tasmania was created ; it might have been expected that a See in Port Phillip (Melbourne) would have been established first, but it must be remembered that Van Diemen's Land had long been an independent Colony with its own Lieutenant-Governor. The establishment of the See was largely due to the exertions of the Governor, Sir John Franklin (who was a life-long friend of Bishop Nixon), though mention should be made of the generous grant of £2500 from the S.P.G. towards

[1] See *Memoir of Broughton*, by Harrison, in a volume of *Sermons by W. G. Broughton*, 1857, p. xvii. The name of William Hutchins is perpetuated in the Hutchins' School (the Church of England Grammar School) at Hobart. He died in 1841.

the endowment of the Bishopric.[1] Nearly a third of the population were convicts who had served their sentences; and as late as 1847 the Bishop spoke of a degree of wickedness among the convict gangs unexampled in the annals of the Christian world.[2] But conditions gradually improved after the cessation of transportation in 1853; and Tasmania was the first of the Australasian Colonies to maintain a self-supporting church and undertake missionary work in New Guinea and Melanesia.[3]

Francis Russell Nixon was born in 1803, and educated at Merchant Taylors' School and St. John's College, Oxford, of which college he became a probationary Fellow. He graduated in 1827, taking a third class in Classics. His father was a clergyman, so that the Bishop's early life came closely under the influence of the Church.

After his ordination, he served at Naples as Chaplain to the Embassy, and, later, held the parishes of Sandgate and Ash in Kent. He also held the position of one of the Six Preachers attached to Canterbury Cathedral—a no small distinction; and was well-known as the author of a book on the Catechism.[4]

At the age of thirty-nine years he was nominated to the Crown by the Archbishop of Canterbury (Howley) and duly consecrated as first Bishop of Tasmania, by Bishop Blomfield of London, under commission of the Archbishop of Canterbury, at Westminster Abbey, on August 24th, 1842. Probably no other bishop of the early Australian episcopate faced greater physical discomfort and hardship than Nixon; and a thrilling story of adventure is told by him in a small volume,[5] of a tour of part of his diocese in the islands adjacent to the coast of Tasmania.

Possessed of a strong will, a vigorous intellect, and benevolent purpose, he guided the early building of the Tasmanian Church; and after an episcopate lasting twenty-one years, he resigned, and returned to England. The Archbishop of York appointed him to the Rectory of Bolton Percy, near York; but his health began to fail as the result of the severe and rigorous Tasmanian life, and he was soon compelled to resign the living. He spent the

[1] Cp. F. W. Cornish: *A History of the English Church in the Nineteenth Century*, Part II, p. 407. [2] *Ibid.* [3] *Ibid.*, p. 408.

[4] *Lectures: Historical, Doctrinal, and Practical, on the Catechism of the Church of England.* London, 1843.

[5] *The Cruise of the Beacon:* Bishop of Tasmania. Bell and Dalby, London, 1857.

eventide of his life near Lago Maggiore in Italy amid the quiet companionship of a few friends. Queen Victoria, who honoured him greatly, sent her physician to see if anything more could be done in his last illness, but in vain ; and he died in his seventy-seventh year in 1889. His remains lie in the cemetery at Stresa, which he had himself consecrated as a burial-ground a few years before.

XI. Bishop Short

The tremendous part played by Bishop Short (of Adelaide), and the service rendered to the Church in Australia during its early history, will be described in detail elsewhere ;[1] there remains but the simpler task of recording briefly the more personal characteristics of so great a figure. His biographer, the present Archdeacon of Hobart, has told the story of his career and episcopate so fully that it seems almost an intrusion to attempt to collaborate, and comment upon his labours and successes.

Augustus Short, the son of a London barrister, was born in 1802, and began his education in 1809 at Westminster School, whence he proceeded, in 1820, to Christ Church, Oxford, where he graduated with a first class in Classics in 1823. Though, strangely enough, like Broughton and Perry, he had been intended for the legal profession, he became tutor of his College, and for some time one of his pupils was the late William Ewart Gladstone. In 1835, he accepted the living of Ravensthorpe, a poor living in a country district in Northamptonshire.

In 1846, he delivered the Bampton Lectures[2] at the time when the Tractarian controversy was at its height. As later history showed,[3] Short was a staunch Tractarian, and to these views he rigidly adhered throughout his career.

In July 1847, while still Vicar of Ravensthorpe, he received the following letter from the Archbishop of Canterbury, offering him the choice between that portion of the Colony which formed the Diocese of Newcastle, and the Diocese of Adelaide :—

" Reverend and dear Sir,

" It being a matter of the utmost importance to obtain the services of men who are qualified by ability, attainments, judgment, and temper for important stations

[1] Cp. pp. 97–99.
[2] Title, *The Witness of the Spirit with our Spirit.*
[3] Cp. p. 97.

in the Church as bishops in the newly-constituted dioceses of Australia, I trust that you will be disposed to accept an office in which, from all I have heard, I consider you will be eminently useful. In temporal respects, these bishoprics have little to offer; the salaries of the bishops are little more than eight hundred a year. But this, I understand, is sufficient to bear all the expenses in a country where incomes in general are small, and money goes further than in England. The diocese over which you would preside is situated in the north-east of Australia. It is not yet determined whether the See shall take its name from Newcastle or some other town. I have reason to think that, in point of situation, it is the most desirable of any of the new Sees. The climate is uniformly represented as very fine.

"I remain, dear Sir,

"Your faithful servant,

"W. CANTUAR.

"REV. AUGUSTUS SHORT.

"P.S. A new See is also to be established at Adelaide, in South Australia, and it is indifferent to me which of the two you would choose. Before you determine, however, you might consult Mr. Hawkins, the Secretary of the Society for the Propagation of the Gospel, who can give full information of all particulars."[1]

Short accepted Adelaide, and Archbishop Howley wrote to him: "Your acceptance of the Bishopric of Adelaide—for this, I understand, is your choice—has given me sincere pleasure. I anticipate the greatest advantage, under the Divine blessing, to the infant Church of the Colony from your zeal and ability."[2]

Short was duly consecrated first Bishop of Adelaide, in Westminster Abbey, on St. Peter's Day, 1847, together with the Bishops of Cape Town, Melbourne, and Newcastle. The area of the Diocese of Adelaide then included Western as well as South Australia, and over this he presided until the See of Perth was founded in 1857, after which date he still continued his episcopate as Bishop of Adelaide.

It should be mentioned here that the endowment of the See was provided by Miss (afterwards Baroness) Burdett-

[1] This letter is taken from Whitington: *Augustus Short*, p. 44.
[2] *Ibid.*, pp. 44 f.

Coutts, whose name will always be recalled for her generosity towards the extension of the Colonial Episcopate.[1]

Like his brother prelates of this era, Bishop Short had many administrative obstacles to overcome; but his tenacity of purpose and churchmanship by conviction, and in action, stood him in good stead, and he was recognized as an energetic and successful administrator.

We shall discuss in detail later[2] his constitutional policy for the governing of his diocese, but we may here illustrate briefly his standpoint. Addressing his successor, Bishop Kennion, after the latter's consecration at Westminster Abbey, Short said, when presenting to him the pastoral Staff of his diocese: "I earnestly wish that the Church of South Australia may ever remember and hold fast its connection with the Church of England."[3] His general position was, that the Church in Australia had not broken away from the Mother Church, but had been left to its own counsels and discretion. He wished to see union with the Mother Church preserved and strengthened, whilst he was not prepared to surrender liberty of action, or to subject the Church to State authority—a policy which was advocated by his former pupil, Gladstone, so far as the Church in the Colonies was concerned.

He resigned his See in 1881, when convinced that the state of his health no longer justified his holding the reins of office, and he departed for England in that year. He died on October 5th, 1883.

[1] Between 1847 and 1857, these gifts amounted to £50,000. She intended that the Colonial Bishoprics should remain in dependence on the Anglican Church at home. Cp. *Dictionary of National Biography*, Second Supplement, Vol. I, p. 261. Smith Elder & Co., 1912.

[2] Cp. pp. 97–99.

[3] Cp. *Church Standard*, Sept. 28th, 1917, p. 6.

CHAPTER IV

THE BEGINNINGS OF THE CONSTITUTIONAL HISTORY OF THE CHURCH

I. The Rev. R. Johnson

"YOU are to observe and follow such orders and directions from time to time as you shall receive from our Governor." With these words from the King's Commission,[1] the earliest Constitution of the Australian Church is summed up. The first chaplains were appointed solely by the State, and owed their allegiance to none save God, the King, and the Governor. Their duties, as we have seen, were to tend the spiritual needs of the convict population ; the convicts were government property ; and any ministrations which they might need were to be paid for from the Government purse. Hence that was the source from which Mr. Richard Johnson drew his meagre salary of £182 10s. 0d.[2] The State paid him, and looked for a tangible return for its expense. With the payment of his stipend, the Government regarded their obligations to the chaplain discharged. No provision was made for the building of churches, and had it not been for Johnson's enterprise, there would have been no church at that period. He, however, was, as we have seen, sufficiently self-sacrificing to erect a church, and though he was eventually reimbursed, it was not till Governor Phillip had been replaced by Hunter. The appointment of these chaplains, moreover, was the only recognition accorded to religion, though careful instructions were issued in the original Commission to Governor Phillip for the "due observance of religion . . . and due celebration of public worship."[3] Additional instructions to Governor Phillip, however, issued in 1789, state : "It is Our further Will and Pleasure that a particular spot in or as near each town as possible be set apart for the building

[1] Document A.
[2] *Historical Records of New South Wales*, Vol. I, Part II, pp. 27, 33.
[3] *Ibid.*, p. 90.

of a church, and 400 acres adjacent thereto allotted for the maintenance of a Minister and 200 for a School Master."[1]

II. His Successors

Johnson was not for long the only chaplain. He soon received help from the Reverend Samuel Marsden as "Assistant Chaplain" in 1793. At first these chaplains were directly responsible to the State; but after 1800 Governor Macquarie no longer required submission from the subordinate chaplains, who were henceforth responsible to the Principal Chaplain alone.[2] The Crown still continued to appoint the chaplains, however.[3] The instructions issued to Phillip in 1789 were repeated in Hunter's Commission.[4]

The new Governor on his arrival proceeded to do his best to fulfil them; for within three years he reported to the Secretary of State for the Colonies, that he anticipated "laying the foundation-stone of a church building." His attitude is well summed up in the following despatch:[5] "I cannot help observing, my Lord, that this Colony has now been a long time established without a proper building for the clergy to perform divine service in, which is really a disgrace to us as a Christian Colony and had not my hands been so tied up, a church should have been raised long since; but being weak in public labour and in danger of considerable loss for want of proper public buildings, I have not been able to attend to so necessary a work except by involving considerable public expense. I trust, however, that I shall soon be able to lay the foundation of a church."

Here we see a clear indication of the policy of the Governor towards the infant Church; he recognized the maintenance of religion as being part of his official duty. So, too, did the Home Government. In the Instructions issued to Sir

[1] *Historical Records of New South Wales*, Vol. I, Part II, p. 259.

[2] In a government and general order, issued at Sydney on Sept. 15th, 1810, we read: "The Assistant Chaplains are, however, to consider themselves at all times under the immediate control and superintendence of the Principal Chaplain and to make such occasional reports to him respecting their clerical duties as he may think fit to require or call for." *Historical Records of New South Wales*, Vol. VII, p. 409.

[3] Cp. The Commission of the Rev. H. Fulton, dated May 31st, 1811. *Historical Records of New South Wales*, Vol. VII, p. 539.

[4] And in the Commission of subsequent Governors down to Brisbane. Cp. Instructions issued to Brisbane, *Historical Records of Australia*, Vol. X, Series I, pp. 598–602.

[5] Sent from Sydney Jan. 10th, 1798, to the Duke of Portland. *Historical Records of New South Wales*, Vol. III, p. 350.

Thomas Brisbane in 1821, we read, "and it is our further Royal will and pleasure that you do by all proper methods enforce a due observance of religion and good order among the inhabitants of the said Settlements, and that you take particular care that all possible attention be paid to the due celebration of public worship."[1]

III. Appointment of Bishop of Calcutta

An event which was destined to have some bearing on the history of the Australian Church took place in 1814. That event was the granting of Letters Patent establishing the Bishopric of Calcutta. For some time there had been agitation in this direction, and following this, Parliament in 1813[2] foreshadowed the creation of the episcopal office by passing an Act which embodied the condition that if the Crown should issue Letters Patent for the foundation of a Bishopric for the whole of the territories of the East India Company's Charter, the salaries of the Bishop and Archdeacons should be paid by that Company. Letters Patent were issued on May 2nd of the following year, providing for the establishment of the Bishopric of Calcutta.[3] The sphere of his jurisdiction, however, was not that of all the territories within the East India Company's *Charter*, as had been provided for in the original Act (1813), but those within its sphere of *Government*, i.e. India itself.

Thomas Fanshaw Middleton[4] was appointed the first Bishop of the "United Church of England and Ireland within the territories of the United Company of Merchants of England, trading to the East Indies." He was subject, in his office, to the Archbishop of Canterbury, "in the same way as any bishop of any See within the Province of Canterbury in our kingdom of England," except that appeals against "judgments, decrees, and sentences" of the Bishop of Calcutta were to be made to a special court of commissioners. Subject to the Bishop, were appointed three Archdeacons of Calcutta, Madras, and Bombay respectively. It should be noted that these Archdeaconries were created

[1] *Historical Records of Australia*, Vol. X, Series I, p. 598.

[2] 53 George III, c. 155. Clause 49.

[3] The document is of excessive length even for Letters Patent; it is too long to print. A copy of it (which I have used) is to be found in the Lambeth Palace Library (*Sutton's Register*, Vol. I, p. 242).

[4] A valuable biography of him has been written by Rev. Charles Webb Le Bas: *The Life of T. F. Middleton*, London, 1831, 2 vols. Le Bas was Professor in the East India College, Haileybury, Hertfordshire.

by the Crown, and that the Bishop of Calcutta was unable, on his own authority, to increase their number; he had, however, the right to "collate" to the three Archdeaconries. With reference to property, the Bishop and Archdeacons were to be "bodies corporate." The Crown had the power "to revoke or recall" the Bishop or any of his Archdeacons. Middleton was duly consecrated Bishop on Sunday, May 8th, in the same year, in Lambeth Palace Chapel.

By these Letters Patent then, Australia was not included within the Diocese of Calcutta. The Bishop of Calcutta had no jurisdiction at this time outside India, as he himself recognized. Referring to some questions asked by the Reverend Samuel Marsden relative to the subject of education in New South Wales, the Bishop of Calcutta wrote in October 1819: "Mr. Marsden writes like a man who will readily and thankfully accept any assistance from me; so that I do not expect any opposition or untowardness in that quarter. I believe, however, that New South Wales is, by courtesy, if not by law, in the Diocese of London, and I am no friend to intrusion."[1] Reference, of course, is made here to an Order in Council of Charles I, whereby all British subjects overseas were under the spiritual jurisdiction of the Bishop of London.[2]

IV. The Appointment of Thomas Hobbes Scott

The original Letters Patent constituting the See of Calcutta gave the Bishop, as we have seen, jurisdiction over India only; and they did not enable him to create new Archdeaconries. Consequently, when it was decided three years later to establish a fourth Archdeaconry for Ceylon, it was necessary to issue two series of Letters Patent,—the one to create the Archdeaconry itself and the other, to increase the extent of the Bishop of Calcutta's jurisdiction and to place the Archdeaconry under his control. Both series of Letters Patent were dated September 27th, 57 George III. In this case, moreover, the Bishop had *not* the right of collating to the office, when vacant, as in the case of the other three Archdeaconries.

Further Letters Patent were issued on May 27th, 1823. These placed the whole of the territories within the *Charter* of the East India Company under the control of the Bishop

[1] Quoted Le Bas, *op. cit.*, II, p. 99.
[2] Quoted in Phillimore: *Ecclesiastical Law*, 2nd edition (1895), p. 1770.

of Calcutta.[1] In this way, Australia and Tasmania became subject to the episcopal jurisdiction of India. It was thus only natural that when an Archdeacon of New South Wales was appointed in the same year, he should be under the control of the Bishop of Calcutta. The Letters Patent were issued on October 2nd, 1824, and a somewhat detailed summary of this highly important document[2] for the Constitutional history of the Australian Church must be given. "It is expedient," the letters tell us, "to make further provision for the due regulation and order of persons duly ordained to officiate as ministers of the United Church of England and Ireland" within the Colony of New South Wales. With this end in view "we have determined to constitute one Archdeaconry, subject during our pleasure to the Jurisdiction, spiritual and ecclesiastical of the Bishop of Calcutta for the time being." Thomas Hobbes Scott was recommended to fill this office, and his appointment he owed solely to the Crown. "By virtue of this our nomination alone (he shall) enter into and fully and absolutely possess and enjoy the said office of Archdeacon." His duty is to be "assisting the Bishop of Calcutta in the exercise of his Episcopal Jurisdiction and Function according to the duty of an Archdeacon by the Ecclesiastical Laws of our Realm of England." "During a vacancy in the office, his duties shall be undertaken by some discreet minister in Priest's Orders of the Church of England, who shall be nominated for that purpose by our Governor." The Governor is also to assist the Archdeacon in the exercise of his office, more exact details being given in the letter of Earl Bathurst to Governor Brisbane referred to below. The Archdeacon is to appoint his own Registrar. The Supreme Court of Jurisdiction in New South Wales is to exercise Ecclesiastical Jurisdiction in certain matters as it had done in the past,[3] but only in "so far as the same does not relate to the correction of clerks or the spiritual superintendence of Ecclesiastical persons or to give to the said Archdeacon or his Successors any authority or Jurisdiction whatsoever in causes testamentary or matrimonial or in matters now cognisable in the said court, except as herein last before excepted." The Archdeacon is constituted "a

[1] Patent Roll 4256. George IV. Part 5, No. 10. It is printed as an Appendix (Document B).

[2] The document is to be found in the Public Record Office, London. Patent Roll 4275. George IV. Part 9, No. 2. It is printed as an Appendix (Document C).

[3] Cp. Therry, *op. cit.*, p. 314.

body corporate," and capable of "purchasing, having, taking, holding and enjoying Manors, Messuages, Lands, Rents, Tenements, Annuities and Hereditaments of what nature or kind so ever." The Crown retains the power of "revocation and recall" of the Archdeacon.

Such, in essence, were the provisions of the document which appointed the first Archdeacon of New South Wales. Two months after the issue of the Letters Patent, Earl Bathurst, Secretary of State for the Colonies, in his Despatch No. 47 to the Governor,[1] Sir Thomas Brisbane, issued additional instructions relative to the functions and powers of the Archdeacon, specially emphasizing the necessity of his exacting due deference to, and recognition of the dignity of his office as Archdeacon, "and requiring all the clergy of the Established Church and other his Majesty's subjects to yield all due Canonical obedience to the Archdeacon." He was to supervise education in the Colony, for he was to be the "Visitor of all schools maintained throughout the Colony by His Majesty's revenue." He was to make a "public visitation of all the churches throughout the Colony, including the settlement of Van Diemen's Land. And the various Chaplains in the Colony, and all Church-Wardens, officiating Clerks, and other persons connected with the celebration of Divine Worship" were bound to "attend the Archdeacon's visitation." This visitation was to take place annually and further, he was to signify in writing his opinion on what particular station any new chaplains arriving in the Colony should be placed, and on this recommendation the Governor was to act. He was to regulate the times for all Divine Services throughout the Colony, and he had power to approve and confirm such appointments as "Vergers, Clerks, Sextons and Bell Ringers," as well as to have power to remove them if sufficient cause were forthcoming. In the event of any clergyman committing an offence or being guilty of any neglect of his clerical duties, he could recommend to the Governor the suspension of the offender and report thereon to his Diocesan, the Bishop of Calcutta. He was to take rank and precedency in the Colony next after the Governor, who was to be careful to confer on him "on all public occasions, such marks of attention as may most effectually recommend his person and his Sacred Office to the respect

[1] *Historical Records of Australia*, Vol. XI, Series I, pp. 419–422. Document D.

of the lower and less educated classes of society." The Archdeacon's salary, which was no mean one,[1] was to be paid by His Majesty's Government. In addition, however, he was to receive "such moderate expenses as the Archdeacon may unavoidably incur in making his visitations" from the revenues of the Colony. The powers thus conferred upon the Archdeacon were very extensive. Bishop Middleton's biographer commenting on Bathurst's despatch to Brisbane, says: "It forms a somewhat curious document in the history of the episcopal establishments of our colonies; since it invests the Archdeacon of Australia with some powers which exceed those conferred on the Bishop of India. These powers, however, it must be perceived, were by no means greater than were required to give to the Archdeacon becoming authority and weight in a dependency so remote from the seat of episcopal jurisdiction; and, after all, the settlement must, practically, be left destitute of the rite of confirmation, the consecration of churches, and all the acts and offices peculiar to the episcopal function, so long as it remains under the jurisdiction of a Bishop whose distance renders a visitation of this part of his diocese next to impossible."[2]

Thomas Hobbes Scott remained Archdeacon until 1829, when he resigned; and fresh Letters Patent were issued appointing William Grant Broughton as his successor.

We see, then, that the conditions existing at the time of the arrival of the Reverend Richard Johnson, in 1788, and for the twelve years of his chaplaincy, during which he received little, if any, encouragement in his labours,[3] are in striking contrast with those which prevailed in 1824, on the assumption of the office of Archdeacon by Mr. Scott, who entered on his ministry, sustained by the support of the Home Government, including the Secretary of State for the Colonies (Lord Bathurst) and of the Governor of the Colony (Sir Thomas Brisbane), and with the belief that his Diocesan, the Bishop of Calcutta, should any occasion arise, was ready to guide and assist him.

V. Division of Diocese of Calcutta

The next event of importance for the history of the Australian Church constitution was the separation of the Diocese of Madras from that of Calcutta. In the period of peace, subsequent on the Napoleonic Wars, the East India

[1] £2,000 a year. [2] *Op. cit.*, II, p. 379. [3] Cp. pp. 39–41.

Company's activities in India had considerably increased, and there was every justification in 1835 for the creation of a second bishop in India. Plans for the proposed new diocese were put forward on September 26th, 1830, by Bishop Turner of Calcutta as early as 1831, 1832.[1] Under this scheme, India was to be divided into two Dioceses of Calcutta and Madras respectively, and there were to be four Archdeaconries in all, the three existing Archdeaconries being increased to four through the sub-division of that of Calcutta. It was suggested that certain colonial possessions of the Crown, viz., Cape of Good Hope, Isle of France, Ceylon, New South Wales, Van Diemen's Land, and the "detached settlements established, or which may hereafter be established, on the Coast of New Holland," should be placed under the joint superintendence in matters ecclesiastical of the two Indian Bishops. The Letters Patent[2] which brought this proposal into effect were dated June 13th, 5 William IV. They made no provision, however, for the Church outside India. All that is laid down regarding it is "that from and after the 10th day of October . . . the territories within our Island of Ceylon and also our Colonies of New South Wales and Van Diemen's Land and their respective dependencies shall be dissevered from, and cease to be parts of the said Diocese and See of Calcutta, and we do by these presents revoke all and singular the Rights, Powers, Authorities, Functions and Jurisdictions of the said Bishop of Calcutta and His Successors, in and over . . . the Territories within the Island of Ceylon, and our said Colonies of New South Wales and Van Diemen's Land and their respective Dependencies, except only such Rights, Powers, Authorities, Functions and Jurisdictions as shall be hereinafter limited or confirmed." The Archdeaconry of Australia was simply severed from that of Calcutta; there is no reference in the Letters Patent to the original proposal that he should be under the joint superintendence of the Bishops of Calcutta and Madras.

VI. The First Australian Bishop

As we have seen, the time was now ripe for the creation of a Bishopric in Australia. In 1833, a letter[3] was sent by

[1] *Reports from Committees. Session* 1831–2. Vol. IX [East India Company's Affairs, Vol. II], pp. 810 f. Document E. [2] Document F.
[3] Despatch No. 76, per ship *Elizabeth*. Dated Sept. 30th, 1833. *Historical Records of Australia*, Vol. XVII, Series I, pp. 224–233. Document G.

Sir R. Bourke to the Right Honourable E. G. Stanley, Secretary of State for the Colonies, in which he set out, in some detail, the conditions of the Church in the Colony. He strongly urged that the Archdeacon should be consecrated Bishop. " For the better discipline of the Chaplains of the Church of England, for obtaining the necessary celebration of the Rites of Ordination and Confirmation, and for maintaining the connection of this Church with the Metropolitan, I would suggest that the Archdeacon of New South Wales be made a Suffragan to the Archbishop of Canterbury or Bishop of London. The stipend of the present Archdeacon is more than sufficient for the proper discharge of this office, and that of his successor might be reduced very considerably."[1] In a later letter to Stanley on the subject, he wrote to the same effect : " In spiritual matters indeed, the clergy of the Church of England require a local Head ; and I cannot, upon further reflection, recommend any arrangement more likely to answer than the appointment of a Bishop for these Colonies at a low rate of stipend."[2] The proposal to create a Bishopric was adopted. On November 30th, 1835, Lord Glenelg wrote to Bourke : " I have much pleasure in informing you that His Majesty has been graciously pleased to nominate him (Broughton) to the new See."[3]

The establishment of the Bishopric was facilitated by Broughton's visit to England in 1834.[4] When the Letters Patent severing Madras from Calcutta were issued, there is little doubt that the appointment of a Bishop of Australia had been practically determined. Otherwise, some more definite provisions regarding the jurisdiction to which the Archdeacon of New South Wales was subject would have been laid down. Apparently, the Archdeacon, for some months, was under no episcopal jurisdiction ; for it was not till January 18th, 1836, that the New Letters Patent were issued. Here it is explicitly stated that " our subjects (resident in New South Wales, Van Diemen's Land and Western Australia, and their dependencies) are deprived of some of the offices prescribed by the Liturgy and the usage of the Church aforesaid by reason that there is not a Bishop, residing or exercising Jurisdiction and Canonical Functions

[1] *Ibid.*

[2] *Historical Records of Australia*, Vol. XVIII, Series I, p. 394. This letter is dated March 11th, 1834.

[3] *Ibid.*, p. 204.

[4] Cp. pp. 44 f.

within the same," and that Broughton was to be appointed " for the remedy of the aforesaid inconvenience."[1]

The chief points in these highly important Letters Patent[2] are the following :—

1. The New Bishop was clearly intended to regard his office as a Crown appointment as he held it subject not only to " the right of resignation " but also to " the power of revocation."

2. Yet he owed allegiance, too, to the Archbishop of Canterbury, " in the same manner as any Bishop of any See within the Province of Canterbury in our Kingdom of England is under the Archiepiscopal See of the Province of Canterbury and the Archbishop thereof " and he had to take an oath of canonical obedience to him on his appointment.[3]

3. The limits of his jurisdiction were those referred to above, i.e. " all the Territories and Islands comprised within, or dependent upon, our Colonies of New South Wales, and Van Diemen's Land and Western Australia."

4. Further he was given " full Power and Authority to confirm those that are baptized and come to years of discretion," only, however, " within the limits of the said Diocese of Australia."

5. He could also ordain ; but under limitations of such a peculiar nature that it is necessary to quote the section in full. " We do by these presents give and grant to the said William Grant Broughton, and his successors, Bishops of Australia, full Power and Authority to admit into the Holy Order of Deacons and Priests respectively, any person whom he shall upon examination deem duly qualified, especially for the purpose of taking upon himself the cure of souls, or officiating in any spiritual capacity, within the limits of the said Diocese of Australia, and residing therein. And we do by these Presents, will and ordain that a declaration of such purpose, and a written engagement to perform

[1] Cp. also Glenelg's letter to Bourke, dated December 21st, 1835. [Parliamentary Papers (Reports). Session 1850. Vol. XXXVII, No. 174, pp. 23 f.] The creation of the bishopric is to enable " the Head of the Church of England within the Australian colonies to exercise that immediate and effective control over the clergy of that Church, which is so essential for the maintenance of discipline and good order."

[2] Document H.

[3] The words of the oath were : " I, William Grant Broughton, appointed Bishop of Australia, do profess and promise all due obedience and reverence to the Most Reverend Father in God, William by Divine Providence, Archbishop of Canterbury, Primate of all England and Metropolitan to His Successors, so help me God through Jesus Christ."

the same under the hand of such person, being deposited in the hands of such Bishop, shall be held to be sufficient Title, with a view to such ordination and that in such a case it shall be distinctly stated in the Letters of Ordination, of every person so admitted to Holy Orders, that he has been ordained for the cure of souls, within the limits of the said Diocese of Australia, only, and that unless such person shall be a British Subject of or belonging to our said United Kingdom of Great Britain and Ireland he shall not be required to take and make the oath and Subscription, which persons ordained in England are required to take and make."

6. He was to exercise jurisdiction over all the clergy of his diocese. For he was "Authorised to grant Licences to officiate to all Ministers and Chaplains of all the Churches or Chapels or other places within the said Diocese of Australia." The Bishop, though authorised and empowered to "punish and correct the aforesaid Chaplains, Ministers, Priests, and Deacons . . . according to the Ecclesiastical Laws of England," was nevertheless subject in his decisions to the right of appeal to the Archbishop of Canterbury.

7. As the Archdeacon had been in the past, so now the Bishop was to a "body corporate," with full power to hold property. "We will and grant . . . that the said Bishop of Australia shall be a body corporate, and do ordain, make and constitute him to be a perpetual corporation, and to have perpetual succession . . . and have full power to purchase, have, take, hold, and enjoy Manors, Messuages, Lands, Rents, Tenements, Annuities, and Hereditaments of what nature or kind soever, . . . and also all manner of Goods, Chattels, and Things personal whatsoever of what nature or value soever."

8. Lastly, it was laid down that, "nothing in these Presents contained shall extend or be construed to extend to repeal, vary or alter the provisions of any Charter, whereby Ecclesiastical Jurisdiction has been given to any Court of Judicature within Our said Colonies and their Dependencies, so far as the same do not appertain to the correction of Clerks or the spiritual superintendence of Ecclesiastical persons, or to give to the said Bishop of Australia or his Successors, any authority or jurisdiction whatever in matters now cognisable in the said Courts, except as hereinbefore excepted."

VII. New Zealand

Only indirectly are we concerned with the early constitution of the Church in New Zealand. At an early date, there was founded the Church Society of New Zealand to help settlers in the Colony to build a church and to establish suitable schools in which children of the natives and Colonists should be educated. With the development of the country, the scope of the activities of the Society were correspondingly increased. It aimed, later, at providing "such a Church establishment for New Zealand as shall be complete and sufficient for all present purposes, and so to endow this establishment as to enable it to keep pace in its resources with the growing prosperity of the Colony."[1] Moreover, this Society urged that, "the appointment of a bishop or bishops for New Zealand was highly important, and that each bishop should be accompanied by three or more clergymen who should fix their residence, together with their bishop, in one spot which may form, as it were, a centre of religion and education, for that part of the country."[2]

Up till the year in which New Zealand was proclaimed a British Colony (1840) the clergy had been maintained by the Church Missionary Society. In this year, one or two chaplains were appointed by the Crown.[3] But when it became definitely a Crown Colony, the question arose as to whether or not the State would be willing to create another episcopal See in accordance with the wishes of the Church Society of New Zealand.

It must not be supposed that the Church in New Zealand had never before seen the face of a bishop. A visitation, certainly an unofficial one, was made in 1838 by the Bishop of Australia, for which Broughton himself was responsible; and the event caused a certain degree of resentment on the part of some of the New Zealand clergy, as he was unauthorised to officiate there.[4] And even those who were less hostile were doubtful if the visitation were of any value since New Zealand was not within his sphere of jurisdiction in the terms of his Letters Patent. Broughton, while admitting the objection, replied that there was nothing to prevent his exercising his spiritual functions in the absence of legal jurisdiction. "You ask me," says Bishop Broughton,

[1] Cp. H. W. Tucker: *Life and Episcopate of G. A. Selwyn, D.D.* (London, 3rd Edit., 1900), i., p. 63.
[2] *Ibid.* [3] *Ibid.* [4] Cp. p. 64, par. 3.

" why I visited New Zealand, not being within my diocese. The immediate reason was, that Sir R. Inglis, on behalf of the Church Missionary Society, had asked me to do so. But I had a further reason for complying with that request, to prove to the Romanists by practical evidence that they are guilty of injustice in affirming that we neither have nor can exercise any episcopal powers except such as are derived from our letters patent under the great seal. I grant that I would never within the Queen's dominions exercise episcopal functions except within those limits which the Queen appoints ; for this, I contend, is the object and effect of letters patent, not to confer spiritual powers, but to define the range within which each prelate shall exercise them. Beyond the limits of the British sovereignty, I contend that every Bishop has an inherent right, in virtue of the powers conferred on him at the consecration, to officiate, especially wherever the good of the Church may be promoted by his so doing ; and there has been no episcopate previously established upon which he would be an intruder. This view, I think you will find confirmed by Leslie in the Regale and Pontificale, and even by Archbishop Wake, who seems to me to go upon rather low ground.[1]

" Here, then, was a case in point : New Zealand was a branch of the Church of Christ not within the British Dominions, not within the bounds of any other episcopate, the members of which needed and invoked my offices.

" In doing so, I thought I took away all plea for the Romanists saying that I possessed no power, nor dared to exercise any except under the authority of temporal patent. I am for ever henceforth in a situation to give a contradiction of this false pretension of theirs ; because I have exercised all the powers of a bishop, ordaining, confirming, consecrating, and issuing marriage licences, in a country to which my letters patent neither extended nor pretended to extend. Now, indeed, New Zealand forms a portion of the British Empire, and therefore, as I have reported to the Archbishop, a portion also of my diocese and of his Grace's province. But then it did not ; and I assume to have done all I did in and by that spiritual right which I derived from those true bishops who, by the laying on of hands, admitted me

[1] " As for those realms in which the civil power is not Christian, natural reason will prompt the members of every church to consult together the best they can," etc. Wake's *Authority of Christian Princes*, p. 266, Ed. 1697.

to their own order. I do not know whether any observation has ever been made upon my undertaking this visitation; I studied the subject carefully, and felt convinced that I was acting canonically, and that my acts were valid. These were my motives, as now stated to you; and if there be the least question raised as to my course of action, I wish very much to have an opportunity of making them generally known."[1]

The Colonial clergy were, in fact, not enthusiastic about having a resident bishop in their midst. Even the Church Missionary Society's Secretary at home was opposed to the proposal. The Society, however, by making a grant towards a bishop's stipend, gave their support to the scheme, and hence events followed which led to the consecration of Selwyn as the first bishop in 1841.

A careful examination of his Letters Patent[2] reveals considerable differences from those which were issued to Broughton. For those differences, Selwyn himself was responsible. His biographer tells us that when he received the draft of his Letters Patent, which were based on those of the Bishop of Australia, he was "shocked by their apparent profanity."[3] After consulting with Doctors Hope and Badeley[4] he sent a statement of his objections to the authorities, but they received no attention; but he was more successful in an interview with the Crown Lawyers and the actual Letters Patent were the result.

The two chief differences between the Letters Patent of Selwyn and Broughton, revealed by a comparison of them, are :—

(*a*) Broughton's appointment was "subject to revocation," that of Selwyn was (unless he determined to resign) "for the term of his natural life."

(*b*) Broughton was granted "power and authority to confirm." These words are omitted in Selwyn's Letters Patent, because of his objection that he had such power, in virtue of his consecration, and not at the delegation of the Crown.

(*c*) Further, a section is added empowering him "to appoint a fit and proper person or persons to be Archdeacon or Archdeacons within the Diocese." Broughton's

[1] *Memoir of Joshua Watson.* Edited by E. Churton (2 vols. Oxford and London, 1861), Vol. II, pp. 126, 127.

[2] Document I. [3] H. W. Tucker, *op. cit.*, Vol. I, p. 71.

[4] Badeley later came greatly into prominence in connection with the Gorham case.

Letters Patent made no provisions either way, but those of the Bishop of Calcutta explicitly denied him the right to create Archdeaconries; and such would appear to have been a limitation laid down in the original Draft Letters Patent.[1]

But though Selwyn had thus succeeded in effecting the removal of two very objectionable points he was unable to get the clause, "giving him power to ordain," excised. He recorded his disapproval in the words:—"I think it right in expressing my readiness to accept the Patent as now framed to state to Your Lordship that whatever meaning the words of it may be construed to bear, I can see that those functions which are merely spiritual are conveyed to the Bishop by the act of consecration alone."[2] Selwyn was consecrated on October 17th, 1841, in the Chapel of Lambeth Palace, at the early age of thirty-two.

VIII. See of Tasmania

The first Chaplain of Van Diemen's Land was the Reverend R. Knopwood, and it was during his Chaplaincy (February 1817) that the Lieutenant-Governor, Colonel Davey, laid the foundation-stone of old St. David's, the church which was at a later date to become the Cathedral. But it was not till 1836, the year in which Broughton was consecrated Bishop of Australia, that Letters Patent (dated March 18th) were issued by which William Hutchins was constituted the first Archdeacon of the island. Hutchins died in 1841; and on August 18th, 1842, Letters Patent were issued establishing a Bishopric. By the Letters Patent which brought the Bishopric of Tasmania into effect, the jurisdiction of the Bishop of Australia over the Colony was revoked. As in the case of Selwyn, the Archbishop of Canterbury was his Metropolitan.[3] His Letters Patent[4] were, in fact, substantially identical with those of Selwyn, which were issued only a few months earlier. The following differences are the most noticeable:—

(*a*) Hobart Town was expressly designated his Cathedral

[1] Cp. H. W. Tucker, *op. cit.*, Vol. I, pp. 71 f. Selwyn regarded the office as "no peacock's feather to distinguish one clergyman above another; but a partnership of helpfulness and work."

[2] *Ibid.*, p. 72.

[3] This was soon to be changed by the appointment of Broughton as Metropolitan.

[4] They may be seen at the Lambeth Palace Library, where I have studied them and those referred to in the following pages.

City. This was the first town to be so designated in the Colony.[1]

(*b*) Like Selwyn, he could appoint his Archdeacons. But his Archdeacons were still more explicitly under his control than in the case of Selwyn. In the Diocese of New Zealand, the Archdeacon could exercise the functions which an Archdeacon exercised in England ; in the case of Tasmania, he is to be solely dependent on the Bishop in the exercise of his powers. Appeal could be made by anyone against the Archdeacon's judgments to the Bishop.

(*c*) More definite provision is made regarding the appointment of Church officers, e.g. a Vicar-General, Official Principal, a Chancellor, and Rural Deans, and "other Commissaries."

IX. The Metropolitan of Australasia and Three New Sees

In 1847 three new Australian Sees, namely, Newcastle, Melbourne, and Adelaide were created ; and the Bishop of Australia was constituted Metropolitan of Australasia and Bishop of Sydney. Of the four series of Letters Patent issued, those referring to the new Metropolitan office are naturally the most interesting. Bishop Broughton, from this date onwards, "shall be, and be deemed and taken, to be Metropolitan of Australasia (subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury for the time being, and subordinate to the Archiepiscopal See of the Province of Canterbury)."[2] Selwyn, the Bishop of New Zealand, was also to be included, if possible, within his jurisdiction. But Selwyn, as we have seen, had succeeded in securing that his office should not be subject to revocation by the Crown. Consequently, it is not surprising that the Letters Patent are somewhat dubious if they can bring about his submission to any other Metropolitan than Canterbury. The words dealing with him are : —"and we further will and ordain that the said Bishop of New Zealand and his successors shall also become Suffragan Bishops to the said Bishop of Sydney and his successors in such a manner and at such time as We or Our successors shall hereafter, with the consent of the said Bishop of New Zealand or upon a vacancy of the said see be pleased by Letters Patent under the Great Seal of our said United Kingdom to order and direct."[3]

[1] Goulburn, New South Wales, was the last.

[2] Document J., Howley's *Register* twice writes "Australia" for "Australasia."

[3] *Infra*, p. 233.

In the Letters Patent, there is no reference to the question of ordination, and the restriction of those ordained performing their functions only within the limits of Australia. There is a like omission in the Letters Patent creating the other three bishops at the same date.

LETTERS PATENT

EXCURSUS TO CHAPTER IV

I. Introductory

It is evident from the preceding chapters what a fundamental part the issue of Letters Patent has played in the history of the Australian Church. Moreover, on the part of some,[1] it was felt that they conferred an autonomous power upon the Bishop altogether inconsistent with Christian principles.

There is no doubt, however, as to their importance in the early history of the constitution of the Church, and it is essential to know exactly what legal powers these documents possessed, and how far the powers which they professed to convey were capable of revocation. As we shall see, events in another Colony led, eventually, to the cessation of the further issue of Letters Patent.

II. The Reverend G. King

A test case arose in New South Wales as early as 1859. The Reverend G. King, a clergyman of the Church in Sydney, had excluded Barker, the Bishop, from officiating in his church. He was cited before the Bishop in accordance with the powers which were purported to be conferred upon him by his Letters Patent. He was declared guilty. But, when appeal was made against the Bishop to the Supreme Court of New South Wales, this body decided in favour of the offending clergyman. It urged that the Ecclesiastical Law of England in virtue of 8 William IV, No. 5, even if originally in force in the Colony, was no longer applicable. The verdict was further substantiated by an appeal to the English Statute 9 Geo. IV, c. 83, section 24, by which the Colonial Legislation was corroborated.[2] In this way the

[1] Notably Bishop Perry of Melbourne. Cp. pp. 83 f.

[2] The case is given in full in Legge: *New South Wales Cases*, Vol. II, p. 1307. The above is taken from *A Digest of the Reported Cases decided*

authority which was thought to attach to Letters Patent received a most serious blow.

III. The Long *v.* Bishop of Cape Town Case, 1863[1]

It is necessary to turn our attention to another part of the world. Bishop Gray, the first Bishop of Cape Town,[2] was appointed to the See on June 29th, 1847. This Bishop had been in the habit for some years of convening Synods as was done in Australia; and among the clergy of the diocese whom he regularly summoned was a certain Mr. Long. Long, however, for reasons which do not concern us, refused to attend these Synods, and also failed to take the necessary steps for the election of a lay representative from his parish. He was, in consequence, deprived of his office.

Long now attempted to get the Bishop's judgment reversed. He appealed first to the local legislature; but was unsuccessful, since they upheld the Bishop's decision. In consequence, he decided to appeal to the English authorities; and when the case came before the Judicial Committee of the Privy Council, the decision was reversed. The Privy Council maintained that there was certainly no authority attaching to Diocesan Courts, since they were not even referred to in the Letters Patent. And they were scarcely less emphatic as regards the Bishop's powers. The Letters Patent conveyed to him no powers of coercive jurisdiction. The Judges of the Judicial Committee said, in fact—"It is not beyond our province to observe that the bishop has been involved in the difficulties by which he has been embarrassed in a great measure by the doubtful state of the law, and by the circumstance that he, not without reason, considered the letters patent under which he acted to confer on him an authority which, at the time that he acted under them, her Majesty had no authority to grant, and that either in this or in some other suit, it was important to the interests of the colony generally, and especially of the members of the Church of England within it, that the many questions which have arisen in this case should, as far as possible, be set at rest."[3] In another section of the document,

in the Supreme Court of New South Wales, 1825–1904. This work is not easily obtainable, but I was allowed access to it by the Masters of the Bench of the Middle Temple.

[1] Cp. 1 Moo. P.C., N.S., 411; 9 Jurist N.S., 805; 8 L.T., 738; 11 W.R., 900.

[2] The See, it is interesting to observe, was founded on the same day as those of Adelaide, Melbourne, and Newcastle.

[3] Cp. foot-note (1) above.

the Letters Patent were declared "ineffectual to create any Jurisdiction ecclesiastical or civil, within the Colony."[1] The powers of Letters Patent had thus been severely questioned.

IV. The Colenso Cases and Letters Patent

The famous Colenso cases[2] brought the problem referred to into still clearer light. There were two further Privy Council judgments arising from the appeals of the notorious Bishop of Natal, Dr. Colenso. The first of these, dated March 20th, 1865, dealt with the proceedings which the Bishop of Cape Town had taken against Bishop Colenso; the second, dated November 9th, 1886, dealt with the question of the continuance of the Bishop's salary after his deprivation. In both cases, it is worth noting, Colenso won. But the importance of these two decisions is, that they bring out still more vividly than the Long case had done, the limits of the powers conferred by Letters Patent. In the 1866 Judgment, substantially repeating that of the previous year, it was declared that "although in a Crown Colony, properly so-called, or in cases where the letters patent are made in pursuance of an Act of Parliament, a bishopric may be constituted, and ecclesiastical jurisdiction conferred by the sole authority of the Crown, yet that the letters patent of the Crown will not have any such effect or operation in a colony, or settlement, which is possessed of an independent legislature."[3]

V. The End of Letters Patent

These two judgments finally gave the death-blow to the issue of Letters Patent. The issue of them ceased from that date (1866), or rather before the second of these judgments had been pronounced. The following letter relative to the proposed consecration of three new bishops, is of considerable interest.[4] Writing to the Earl of Carnarvon, Archbishop Longley said, "It has become urgently necessary to appoint Bishops for the Episcopal superintendence of the Clergy and Laity of the Communion of the Church of England in various colonies in which her Majesty's power of erecting Bishoprics has been denied or

[1] *Ibid.*

[2] Cp. 3 Moo., P.C., N.S., 115; 11 Jurist N.S., 353; 12 L.T., 188; 13 W.R., 549. Also L.R., 3. Eq. 1.

[3] *Ibid.*

[4] Quoted in H. L. Clarke: *Constitutional Church Government*, p. 185.

rendered doubtful by the recent decision of the Judicial Committee in the case of the Bishop of Natal. If the Queen should not be advised to make these appointments in the usual way by Letters Patent, under the Great Seal, I trust her Majesty's permission will be accorded for the consecration of proper persons to exercise the office of Bishop within the colonies to which I have referred, though, without the legal powers which have heretofore been conferred or purport to have been conferred by Letters Patent.

"In that event, I have to request that her Majesty may be pleased to issue the necessary mandates authorizing me to proceed to the consecration of the following Clergymen whom I consider to be fit and proper persons to exercise the office of Bishops in the manner proposed.

"The Rev. Andrew Burn Suter, M.A., for the Colony of New Zealand.

"The Rev. Henry Lascelles Jenner, LL.B., for the Colony of New Zealand.

"The Rev. Samuel Robinson Waddelow, for the Colony of New South Wales."

In the case of the two former, the Royal licence to consecrate them was granted within a week of the sending of this letter.[1]

But, though the issue of Letters Patent appointing Colonial bishops ceased at this date, it was not till 1873 that it was formally laid down that this was to be so.[2]

It was generally recognized from this time onwards that these lengthy and sonorous documents were of no legal value. Thus both the English and the Australian Counsel concurred in this decision when asked by the General Synod of 1916 to express their opinions on the subject.[3] Fortunately such decisions cannot detract from their value and interest to the historian.

[1] Mr. Waddelow did not receive consecration, on the ground of his ill-health.

[2] Phillimore: *Ecclesiastical Law*, 2nd Edition (1895), p. 1786.

[3] For their opinion, cp. *Proceedings of General Synod*, 1916, Official Report, pp. 73–77.

CHAPTER V

THE 1850 CONFERENCE AND THE EVENTS WHICH FOLLOWED

I. The Position Reached

ABOUT the middle of the last century the time had arrived for the Church of Australia to consider the question of a definite Constitution. The population of the Colony was increasing by leaps and bounds, even before the 1851 "Gold-Rush," and it was to increase still more rapidly just after the middle of the century. Something more definite was needed than the legislation laid down in the Letters Patent; for in the first place they gave information only on isolated points and took no cognizance of the actual conditions of the Church and its practical needs; and in the second place it was widely felt that the autocratic powers conferred upon the Bishop in the Letters Patent were hardly suitable in a new Colony like Australia, which, since it had ceased to be essentially a convict station, was bound to develop on democratic lines. The Church needed more definite, and yet more democratic, legislation.

To effect the necessary changes was no easy matter. Clearly the only means of securing more democratic legislation was by means of some sort of church assemblies, which should give the clergy, and if possible the laity, a voice in the affairs of the Church. Here were three possible courses open: (*a*) To appeal to the Home Government for the right to form such assemblies and to give them the necessary legislative power. (*b*) To appeal to the Colonial Government to do likewise. (*c*) To form their assemblies without consulting the governments at all. As we shall see, there was really a great deal to be said in favour of the first course as compared with the other two, but it was soon seen to be impossible. Only the two latter were found practicable; the former of these was followed in: e.g. Victoria and Tasmania, and the constitution of the Assemblies in these

Churches are said to be based on " Legislative Enactment," the latter of these was followed in : e.g. New Zealand and South Australia, and here the Constitutions are said to be based on " Consensual Compact." For the first time we meet here those terms which were to play an important rôle in constitutional discussions for over seventy years.

II. Earlier Synods

There is evidence for Diocesan Synods, at any rate in New Zealand, before the middle of the century. As early as 1844, the Bishop, two years after his arrival, held a Synod at the Waimate. This was the first experiment of the kind which the Anglican Communion had experienced since Convocation was silenced in England in 1717.[1] The discussion was limited to questions of Church discipline and Church extension. Examples of their decrees are the refusal of the Church to receive polygamists (it must be remembered that the New Zealand Church was originally composed mainly of Maoris) ; regulations were laid down respecting sponsors at baptism ; and the heathen were refused admission to marriage. Though these subjects were harmless from a Synodical point of view, the news of the Synod very soon reached England, and " some good people saw in it priestly assumption, and others discovered in it an infringement of the Royal Supremacy."[2] However, nothing happened ; and in 1847 a second Synod on the same lines was held.

III. The Conference Itself

The first step that was taken was the Metropolitan's convening of a Conference at Sydney in 1850 to discuss preliminaries. The importance of this Conference cannot be overestimated. All the six Australian Bishops[3] took part ; and there is little doubt that they hoped that the Home Legislature would grant them the Constitutions they needed. It is true that a widespread feeling prevailed that the Church at home showed considerable lack of interest in the affairs of the Colonial Church, though this is scarcely justifiable. One of the results of the Oxford Movement was an increased interest in the condition of the Church over-

[1] Cp. H. W. Tucker, *op. cit.*, I, 158. On the silencing of Convocation in 1717 cp. N. Sykes, *Edmund Gibson* (Oxford, 1926).

[2] H. W. Tucker, *ibid.*, I, 159.

[3] Broughton of Sydney, Selwyn of New Zealand, Nixon of Tasmania, Short of Adelaide, Perry of Melbourne, Tyrrell of Newcastle.

seas, an interest which manifested itself in the development and growth of the Episcopate. In an address read to the Conference, Archdeacon Cowper[1] is reported to have said, "We have much satisfaction in perceiving that in England a lively interest, which has of late years been directed to the proceedings of the Colonial Church, is still increasing. We regret, however, to observe that a want of correct information often frustrates the exertions of Churchmen at home, and we hope that your lordships' deliberations may result in indicating a course by which they may, in future, be enabled to judge more correctly of our difficulties and the means of remedying them."[2] The Metropolitan's reply was intended to allay all pessimism about the Church's future on this score. "When we reflect, that only yesterday, as it seems, I was standing here a solitary bishop, having charge in my own person of that vast portion of the earth's surface which is now included in so many separate dioceses, it must strike us all as a manifest token of God's continued favour to our Church that an arrangement so desirable and important, yet at the same time involving so many difficulties, should have been so quickly, and as far as it has yet gone, so successfully carried into effect. It is in the hope of being enabled more fully to discharge their part of the common obligation, that my right reverend brethren have, at my summons, attended here. . . . We entreat you to bear in mind the impediments which must attend the transplantation of an ancient system to a new soil, and to admit that in an atmosphere of so changed a character some time must be allowed; and care and judgment, prudence and patience, must be exercised before that system can become firmly rooted, and develop itself in its full growth and native vigour."[3]

The bishops themselves were fully conscious of the importance of the task which they had in hand,—and not only the bishops. Before Selwyn departed from his diocese, he had received a sympathetic address, signed by the Governor, the Chief-Justice, the Attorney-General, and many of the laity, "praying that the Church might be constituted in some way that would secure to her the power to manage her own affairs, and that in any such constitution

[1] Cowper was one of the original Government Chaplains in Sydney. He must be carefully distinguished from his son, W. M. Cowper, appointed Archdeacon and Dean of Sydney himself at a later date.

[2] G. Goodman: *The Church in Victoria during the Episcopate of Bishop Perry*, Melbourne, 1892, p. 134. [3] *Ibid.*, p. 135.

the laity might have their full weight."[1] Selwyn's own interest in the Synod appears to have been especially centred in the establishment of a Board of Missions which was to organize the mission work of the whole of Australasia. But it was the question of legislature which was the fundamental one at the Conference.

The importance of this Conference which sat from October 1st to November 1st, 1850 (with Bishop Tyrrell acting as Secretary), necessitates a somewhat detailed account of the resolutions set forth by it. There were ten :[2] (*a*) The Objects of the Conference. (*b*) Canons of A.D. 1603–1604. (*c*) Future Synods and Conventions, Provincial and Diocesan. (*d*) Church Membership. (*e*) Discipline—(i) Bishops and Clergy, (ii) Laity. (*f*) Status of Clergy. (*g*) Liturgy : *Decisions and opinions concerning*—(i) Divisions of services ; (ii) The administration of Holy Communion ; (iii) The occasional Offices ; (iv) Services for Saints' Days falling on Sundays ; (v) Persons prayed for ; (vi) Persons returning thanks ; (vii) The Offertory ; (viii) Sponsors ; (ix) Marriage —(a) Within prohibited degrees, (b) Of persons not members of the Church, (c) Irregularly solemnized, (d) Caution to be used ; (x) Churching of Women ; (xi) Claims to the Offices of the Church. (*h*) Holy Baptism. (*i*) Educational—(a) Schools, (b) University. (*j*) Board of Missions.

All these, with the exceptions of the decisions on Baptism (Resolution (*h*)), were signed by all the Bishops at the Conference. We may note especially the following :

1. In the first Resolution it is clearly brought out that the Conference has no power of legislation—" In consequence of doubts existing as to how far we are inhibited from exercising the powers of an Ecclesiastical Synod, (we) resolve not to exercise such powers on the present occasion." The doubts that questioned the legality of the assembling of such Conferences were, of course, occasioned by the Act of Henry VIII, which forbade the sitting of Convocation without the King's assent.[3]

2. The references to the Canons of 1603–1604 wisely proposed that they should be adopted as far as possible in the Australian Church. Of course, cases would arise where

[1] H. W. Tucker, *op. cit.*, I, 358.

[2] The Minutes of the Proceedings of the Meeting were published as a separate pamphlet at Sydney in 1850. (Printed by Kemp and Fairfax.) They are reprinted as Document K.

[3] 25 Henry VIII, c. 19 (1533). Cp. H. L. Clarke : *Constitutional Church Government*, pp. 8 f.

such adoption was impossible, both through their being out of date in England, and also the peculiar conditions in which the new Colony found itself. The principle adopted here, it is interesting to observe, is substantially that adopted in the Act 9 George IV, 24, which provided that the civil laws were to be applied to Australia as far as applicable under Colonial conditions. " We concur also in thinking that a revisal and fresh adaptation of the Canons to suit the present condition of the Church is much to be desired, so soon as it can be lawfully undertaken by persons possessing due authority in that behalf."

3. This, the most important decision for our purpose, deals with the necessity for " duly constituted Provincial and Diocesan Synods." " Without defining the exact meaning of the word ' Synod ' as used in the Church of England, whenever the words ' Provincial Synod ' or ' Diocesan Synod ' shall be used in the following resolutions, we understand a body composed of one or more Bishops, with representatives chosen from among the clergy, meeting at such times and in such manner as may not be inconsistent with any Law of Church or State." Under this heading there are three main proposals, and the functions of these Provincial and Diocesan Synods are understood to be twofold:

i. " To consult and agree upon Rules of Practice and Ecclesiastical Order within the limits of the Province or Diocese."

ii. " To conduct the processes necessary for carrying such rules into effect. But not to alter the Thirty-nine Articles, the Book of Common Prayer, or the Authorized version of the Holy Scriptures." The last quoted sentence was written before the days of " modern theology " ; of alternative Prayer Books ; and the Revised Version of the Scriptures. Perhaps the Conference would have been less explicit on these matters if it had taken place later.

iii. It is suggested that it appertains to Provincial Synods, with the concurrence of the Diocesan Synods, to decide and recommend plans for the subdivision of Dioceses ; that no diocese should be subdivided without previous consultation with the Bishop, so that the scheme may be laid before the Diocesan and Provincial Synods ; and that in the event of vacancies in the episcopate, any Colonial Priest recommended by the Provincial Synod to

fill the office, should be favourably considered by the authorities in England, and, if possible, the consecration should be performed by the Metropolitan and Bishops of the Province.

iv. It is further recommended that the laity should be represented in Diocesan and Provincial Conventions meeting simultaneously with the Diocesan and Provincial Synod; and, that the concurrence of both clergy and laity should be necessary for any decision concerned with the temporalities of the Church. Also, "Any change affecting the whole body of the Church should be first proposed and approved in the Provincial Synod, but should not be valid without the consent of the Provincial Convention."

4. All those who have received valid Baptism in the Church of England are to be numbered among its members, but to be a "Member of the Church of England in full communion" it is necessary also to be "a partaker of the Holy Communion, as required by the rules of the Church." But though it is to be left open "to the Synods and Conventions, which may hereafter be appointed, to fix the qualifications of electors," it is recommended that "all persons elected to serve as members of Diocesan and Provincial Conventions should be members of the Church in full communion."

5. The next Section is devoted to "Discipline." All power of the bishops to suspend or revoke at their own discretion the licences of clergy are disclaimed. For the purpose of trying a bishop, the Bishops of the Province should be constituted a Court; for the purpose of trying a presbyter or deacon, the Diocesan Synod should be such a Court; in the former case, the Metropolitan; in the latter, the Bishop of the Diocese should be *ex officio*, President. Suggestions as to the exercise of discipline over delinquents among the laity are also laid down.

6. The Status of the Clergy is the subject of the next Section. Though upon candidates for Holy Orders is urged the great desirability of their placing themselves at the disposal of the bishops for a period of years, it is recommended that no clergyman who shall have been "duly appointed and licensed to any Church or permanent cure of souls shall be removable therefrom, except by sentence pronounced after judicial enquiry, before the Diocesan Synod."

7. The remaining four sections are headed "Liturgy," "Holy Baptism," "Education," and "Australian Board of Missions," respectively.

Such, in outline, were the contents of what John Keble described as "one of the most important documents of our times."[1] All were convinced of its importance; and the spirit in which it was received is clearly manifested in the following extract from an address of Bishop Tyrrell's within a fortnight of the Conference—"We would desire, above all things to render our humble thanks to our Merciful Father, that while sin and infidelity are arousing themselves through the world, He has graciously stirred up to new life our Branch of the Church. We consider it no small sign of His goodness towards us that six Bishops of the Church of England have been allowed to meet and take counsel in the Diocese of Sydney; and three to assemble in this Diocese (Newcastle) where within the memory of man, the Word of God and the name of Jesus Christ were unknown."[2]

There is an importance attaching to the decisions on Baptism, which for our purpose greatly exceeds their intrinsic value. Needless to say, they reflect the strong feelings aroused in Australasia, no less than elsewhere, through the recently pronounced Gorham Judgment. The importance of this Judgment, in its influence on the minds of those who were to guide the future destinies of the Australian Church cannot be too greatly emphasised. Even at the time of the Conference, there was great difference of opinion, because the section dealing with Holy Baptism was the only one not signed by all the six Bishops. Bishop Perry of Victoria preferred to draw up a different statement of his view; and though he stated his "firm belief that infants do receive in Baptism the grace of Regeneration," his own interpretation of the doctrine leaves little room for doubting that all his sympathies were on the side of the Crown in the Gorham Judgment. The fact that it was just at this critical moment in the history of the Australian Church that the Baptismal Controversy was uppermost in men's minds, meant that those who were in sympathy with the Crown would tend to look to State Control as the ideal method of Church Government; those in sympathy with

[1] Quoted, without references, by H. L. Clarke: *Constitutional Church Government*, p. 83, and H. W. Tucker, *op. cit.*, I, 349. I have been unable to find the passage in Keble.

[2] R. G. Boodle: *Life and Labours of William Tyrrell, D.D.*, p. 92.

the Bishop of Exeter, on the other hand, would prefer a Constitution which enabled the bishops to legislate, unfettered by State Control. It was no mere chance that Perry sought the method of Legislative Enactment as ardently as Selwyn and Short opposed it

CHAPTER VI

VICTORIA: AN EXAMPLE OF "LEGISLATIVE ENACTMENT."

I. The First Conference

FROM the beginning of his episcopal career—indeed, from much earlier, to judge from his alleged Whig tendencies—Perry was opposed to any sort of despotic government on the part of the bishops. And yet he recognized that his Letters Patent vested all powers of Church government in his diocese solely in himself. Even before the famous 1850 Conference met, he sent Broughton a letter (dated July 4th, 1850) in which he wrote[1]—"It has been said, and with some plausibility, that a despotic government is the best possible, provided that the despot is a good and wise man. But, even under the most favourable circumstances, I exceedingly dislike despotism, believing that whether it exist in the Church or the State, the disadvantages always preponderate over the advantages. A limited monarchy is that which I consider the most desirable for both. One of my chief reasons for this is, that despotic authority crushes all independence of thought and action in those who are subjected to it, however wisely and mildly it may be exercised; and also, that there is great danger of its affecting injuriously the character of him who exercises it. Moreover, with regard to the Church in these colonies, I am convinced, in my own mind, that it will never gain a hold of the affections of the people, unless there be something of the popular element introduced into its constitution. Even now, there are not a few who talk of what they absurdly call a free Episcopal Church!" Further on in the same letter we read—"By giving the laity a distinct voice in the former, and establishing the latter upon a certain fixed basis, we shall, I consider, at once remove their fears and stir up in them much more zeal for the extension of the Church. Nor do I see the least objection

[1] Goodman, *op. cit.*, p. 223.

to this upon principle, but rather the contrary; for it appears to me undeniable that the early constitution of the Church was a limited, and not an absolute Episcopacy, and that the latter was the growth of a late and corrupt period. So likewise the constitution of the Anglican Church is obviously of the same character. In it, the power of the Bishop is, perhaps, too much restricted. By the present Bill for the diocese, we propose to give the Bishop an absolute irresponsible power of rejecting any clergyman who may be nominated to him as minister of a particular church. . . . With regard to the right of the Government to interfere with our Church, I perfectly agree with your lordship that they have no right, except at our request, or with our free consent, but we are so circumstanced that we can do nothing without the assistance of the Legislature. As a branch of the Church of England, we cannot make laws for ourselves, and without duly recognized ecclesiastical courts, we cannot maintain any discipline, except by an irresponsible exercise of authority."[1] He agrees that "the Government do not possess, and that they shall not have, the power of appointing clergymen to any situation in the colony, and I should be quite prepared to unite with you in resisting the exercise of any such right to the uttermost. But," he continues, "I know positively that Earl Grey claims it; and although our present Governor and Superintendent are never likely to give us any trouble respecting it, some future persons holding those offices may, especially if they take any offence against us, occasion us very serious annoyance."[2]

The words:—"We can do nothing without the assistance of the Legislature," sum up his whole policy. From first to last, Perry was convinced that the only effective form of Church government was one based upon "Legislative Enactment," and he fully believed that there were no obstacles in the way of obtaining such legislation.

II. The Sydney Bill

Even before the 1850 Conference of the six bishops, the Bishop of Melbourne made an attempt to pass two Bills dealing with patronage and discipline. It must be remembered that it was not till August 4th, 1850, that the Imperial Act was passed, establishing Victoria into a separate Colony; and, consequently, all attempts at legisla-

[1] Goodman, *op. cit.*, pp. 223 f. [2] *Ibid.*, p. 22

tion had to be introduced into the Legislative Council at Sydney, six hundred miles away. When, therefore, there was a certain amount of dissatisfaction shown with the proposals even in the Melbourne diocese itself, dissatisfaction which led to the sending of a petition to the Sydney legislature against the Bills, it is not surprising the usual apathy which was shown there towards Melbourne affairs was manifested, and the Bills were never passed. But this is to anticipate.

Having drafted the Bills, the Bishop commissioned Mr. Henry Moor, his Registrar, to introduce them. "Mr. Moor," we are told, "was an excellent man for such a commission, being a shrewd, clear-headed lawyer of extensive practice, and not without experience in political affairs, as he had, for some time, represented Port Phillip in that body (i.e. the Legislative Council at Sydney)."[1] Two strong Churchmen, Messrs. Pohlman and Sladen, were to be associated with Mr. Moor in his work. Some of the proposals which Perry wished to be carried through are to be seen in a letter which he sent to the Registrar :—"With regard to the Act for Regulating the Temporal Affairs of Churches, I would suggest a yet wider application of the fund arising from pew-rents. I do not see any reason why a portion, at the discretion of the churchwardens and with the approbation of the bishop, should not be appropriated towards the maintenance of the minister. I would also suggest, that the trustees of any church, appointed according to the directions of the Act, should be authorized to nominate to the bishop for his approval, whenever a vacancy should occur, a minister to such church. I am well aware that this clause would introduce a most important change into our ecclesiastical system, but the more I have considered the subject, the more I am convinced that some such change is required in order to secure the attachment of the people to our Church, and make them feel that they have a real interest and a certain responsibility in its well-being and efficiency. I am sure that the retention of patronage in the hands of any individual, whether that individual be the Bishop or the representative of the Crown, must be injurious, if not absolutely ruinous, to the permanent progress of the Church. The Bishop should, however, have power to reject any person nominated for a spiritual charge, if he do not consider him suitable."[2]

[1] *Ibid.*, p. 225. [2] *Ibid.*, pp. 225–6.

These views on patronage met with considerable opposition from some quarters, notably the Geelong Church trustees. The Bishop was requested in a letter (dated July 18th, 1850) from Mr. Sladen, who was now himself opposed to the Bills, not to press them. Feeling rapidly became strong ; and to such a pitch did it rise that the Mayor of Melbourne called a public meeting to consider the objections. A petition to the Legislature was the result. It was objected that the Bills would offer partial treatment to the Anglican Church, since they were " subversive of the principle of denominational equality " ; and further that " by arming an ecclesiastical court with secular powers, (they) were fraught with the utmost danger to their civil and religious liberties and could not be viewed by an enlightened British community but with feelings of jealousy and serious apprehension."[1] There was no longer any doubt as to the fate to which the Bills were doomed, and Mr. Henry Moor wisely withdrew them, in the hope that they might be brought up again when feeling had subsided.

III. The First Conference, 1851

After his return from the 1850 Conference at Sydney, Perry convened a Conference in his own diocese to decide the lines on which the Church in the Colony was to proceed with a view to drawing up its own constitution. It was proposed to consider " various subjects, especially the constitution of the Church of England in Port Phillip, with regard to the expediency and mode of organizing Diocesan Synods and Conventions, acting either separately or collectively, and the functions with which they should be invested." This Conference, which sat at Melbourne from June 24th–July 9th, 1851, passed the following resolutions :—

i. That this Conference in the Diocese should, from time to time, assemble by representatives.

ii. That it is desirable that the clergy should meet with the laity in one house, to be presided over by the Lord Bishop.

iii. That the assembly should consist of all the licensed clergymen of the Diocese being in Priest's orders, with one or more representatives from each parish.

The experiences of the two rejected Sydney Bills led the members of the Conference to think that the best course would be to secure from the Home Government the necessary

[1] Goodman, *op. cit.*, p. 229.

Legislative Authority. But even at that date, they were not unaware of the objections to the formation of assemblies of clergy, and a Committee was appointed to " enquire into and report upon the present state of the law which regulates the temporal affairs of the Church of England."[1]

IV. The Legislative Bill (18 Vict. No. 45)

A second Conference was held exactly three years after the last-named, i.e. on June 24th, 1854, when the report of the Committee appointed by that previous Conference was discussed. In the meantime, two events of fundamental importance had taken place: (*a*) Victoria was formally proclaimed an independent Colony in July 1851. It was no longer necessary, therefore, to appeal to the Legislative Council of New South Wales, but to one which could be relied upon to give the proposals a more sympathetic consideration. (*b*) Archbishop Sumner's Bill had been rejected in the House of Lords.[2]

It was therefore quite natural that Perry should look now to the Colonial Legislature to give to his scheme the necessary sanction; and this, too, was the advice which his friends in England gave him.[3] " They recommend," he wrote, " that we should draw out our scheme, just as if a Bill of a similar nature with that proposed by Mr. Gladstone had passed, or as if no such Bill was required; then proceed to carry it out, as far as practicable, and afterwards apply either to the Colonial or Home Legislature to remove any obstacles which may present themselves to the working of the plan, or to confer such powers as may be found requisite for giving it full effect." A draft Bill was drawn up by Mr. W. F. Stawell on the basis of the rejected Bill of Sumner, and, after receiving the general assent of the Conference, was brought by him before the Melbourne Legislature in November 1854. Though the opposition was not strong, two objections were urged; some of the Nonconformist members felt that the principle of " denominational equality " was being sacrificed; others alleged that the Legislature was precluded from passing any Bill at variance with the Home Legislature. They maintained that they did not understand why they should consent to the Bill when the British House of Commons had refused a similar

[1] Cited Goodman, *op. cit.*, p. 240.
[2] This Bill will be found in H. L. Clarke: *Constitutional Church Government*, pp. 24–27.
[3] Goodman, *op. cit.*, p. 241.

request.[1] But despite these attacks, the Bill passed, and received the Seal of the Colonial Legislature on November 30th.

Only in its details did the Victoria Church Constitution Act (for so the Act is called) differ from that of Archbishop Sumner. Its purpose was, as the title expressed it, " to enable the bishops, clergy and laity of the United Church of England and Ireland to provide for the regulation of the affairs of the said Church." We will confine ourselves here to pointing out these differences; the Victoria Act is printed as an Appendix.[2]

(*a*) Sections 2, 18. These give the assembly the power of making regulations respecting the affairs of the Church " including all advowson and right of patronage," yet only, " so far as the advowson or right of patronage in Victoria (if any) now vested in Her Majesty (is not) hereby expressly impaired, diminished, or affected." These references to Patronage and Advowson are not to be found in the Sumner Bill.

(*b*) Section 2. The provisions of the assembly affect, in the Victoria Act, persons " *in communion with* " members of the Church of England and Ireland as well as members of the Church itself. It is probable that members of the American Episcopal Church were in view. No such reference is found in Sumner's Bill.

(*c*) Section 3. The Victoria Bill provided for the creation of a Commission to try ecclesiastical cases. Sumner's Bill presupposes that they will be tried by the Assembly itself. This Commission is to have powers of jurisdiction only over " Clergymen of the United Church of England and Ireland," and is to report on any sentences pronounced to the Bishop. This last statement presupposes that the Bishop is not himself a member of the Commission.

(*d*) Section 5. Archbishop Sumner's Bill speaks of the Book of Common Prayer and the XXXIX Articles of Religion as the doctrinal basis; the Victoria Church Act simply of " the authorized standards of faith and doctrine."

(*e*) Section 8. While both demand a declaration of Church membership on the part of electors to the Assembly, the Victorian Act is peculiar in adding " provided that no person shall be entitled to vote at any such meeting who is known to have impugned the doctrines or discipline of the said Church."

[1] Cp. Goodman, p. 236. [2] Document L.

(*f*) Section 9. It is explicitly stated in the Victoria Act that " male persons " shall be elected as representatives to the Assembly. Though not stated, it is almost certainly implied in the Sumner Bill.

(*g*) Section 12. Representatives, as well as electors, are required to make a declaration of membership in the Victoria Church Act.

(*h*) Archbishop Sumner's Bill (Section 16) states that any Act of a Synod which has received the Royal Assent shall not be invalidated by any future discovery that the Council which promulgated it was improperly constituted. The Victoria Act omits this provision.

V. The Royal Assent

It was still necessary to secure the Royal Assent before the Bill found a place in the Colonial Statute Book. Bishop Perry felt that the English Law had to be treated in the spirit, rather than the letter, and this was possible only if he himself went to England and personally pleaded the peculiar circumstances of his Diocese. This he did, arriving in England on March 16th of the following year (1855). Lord John Russell, who was Secretary of State for the Colonies, was approached, but was adverse to the measure, partly (as it transpired later) because he had a scheme of Church government of his own for Australia, and partly because the Roman Catholics of Victoria had petitioned against the Queen's assent being given.[1] Russell, however, resigned before coming to a decision ;[2] and was succeeded by Sir William Molesworth, who proved to be definitely in favour of the Bill. But, to Perry's great dismay, the Crown lawyers were found to be altogether adverse to it. Molesworth died shortly afterwards, and Perry visited a third Secretary of State, to make another attempt. Molesworth's successor, the Right Hon. H. Labouchere, was even more favourably disposed towards the Bill. The Bishop, in conjunction with Mr. Thomas Turner, a barrister,[3] drew up a careful statement of the reasons why the Royal Assent was so necessary ; and ultimately, it was granted on December 12th, 1855. Perry, however, had been obliged in the meantime to leave ; and it was not till after he arrived

[1] Goodman, *op. cit.*, p. 245.

[2] The reason, it will be remembered, was the strong feeling occasioned against him by his conduct at the Vienna Conference.

[3] Formerly a Fellow of Trinity, Cambridge, and a contemporary of the Bishop.

in Australia that all his apprehensions about the fate of the Bill were removed. In a despatch to the Governor of Victoria, Mr. Labouchere wrote[1]— "Some objections directed, however, rather to its policy than to its legality have been raised to certain portions of the measure. But though not insensible to the force of those objections, Her Majesty's Government have deemed it their duty not to interfere with the operation of a measure intended to serve a purpose of which the importance and the exigency appear to be so fully recognized. Her Majesty has, consequently, been advised to give her assent to the Bill; and the necessary Order in Council will accordingly be transmitted without delay."

It is interesting to observe that only three months earlier Labouchere wrote to the Canadian Governor, Sir E. Head, with reference to a similar demand from that Colony:— "Upon reference to the law officers of the Crown, serious doubts have been expressed whether this Act does not go so far beyond the provisions of the Act passed by the Legislature of the Colony of Victoria as to render it unlawful for Her Majesty to give her assent to it without the assistance of the Imperial Parliament."[2]

VI. Later History of the Act

It will be convenient here to note the later amendments to the 1853 Act, though they can hardly be said to possess either great importance or great interest. In 1872 (36 Vict. No. 454) it was stipulated that the Diocesan Assembly had power "to make provision for the appointment, deposition, deprivation, or removal of any person bearing office (in the Church)." (Section 2.) There is almost a touch of humour attaching to the provision that the Assembly may "substitute for the expression 'United Church of England and Ireland' where used in the said Act such other word or words as to (the) Assembly shall seem desirable." (Section 1.) It was occasioned by the Church's official designation being altered to "Church of England."

In 1903 a further amendment (No. 1821) gave recognition to the Assemblies of Ballarat, Bendigo, and Wangaratta.[3]

Yet another amendment (No. 1947), in 1904, repealed the

[1] Goodman, *op. cit.*, p. 248.

[2] Quoted in H. L. Clarke: *Constitutional Church Government*, p. 86 n.

[3] It should be noted that Gippsland is omitted though founded at the same time as Bendigo and Wangaratta; possibly because the first Gippsland Assembly did not meet until after the passing of this Act.

section of the original Act dealing with the formation of Provincial Assemblies. (Section 2.) The word "Synod" was substituted for the word "Assembly." (Section 3.)[1] The original Act, together with these amendments, "shall be construed as one (Act)," and may be cited, shortly, as the "Church of England Act, 1904."

VII. The Provincial Constitution of Victoria

A highly important Conference with a view to the formation of a *Province* of Victoria was held in Melbourne on July 27th–28th, 1904. Its proceedings were afterwards published in a small pamphlet.[2]

There were now the five Dioceses in Victoria, so the minimum number (then three, but now four) laid down by the General Synod[3] was almost doubled.[4]

The Bishop of Melbourne (H. Lowther Clarke), as the Bishop of the Senior Diocese, presiding, made a highly characteristic speech. Having quoted the derogatory remarks on the value of Synods from the address of the translators of the English Bible, he said, "Not in passion, but in sober judgment, I can only say of this Conference, *meliora spero!*" He then referred to the recommendations of the Lambeth Conferences of 1867 and 1878, and to those of the General Synod. The latter had determined:[5]

i. "The Synod or Assembly of each diocese shall duly pass resolutions in favour of the action.

ii. "If the Province is coterminous with a State, the capital city of the State shall be the See of the Metropolitan Bishop."

The General Synod had recommended, too, proportional representation. "As far back as 1844," he continued, "Bishop Barry had described the existence of a Provincial Synod which is obliged to report humbly to the Diocesan Synods, as an ecclesiastical monstrosity.[6] Constitutional unity and an outlook as wide as the State itself is the sole object which the Diocese of Melbourne has in view." The Bishop then gave a list of the subjects which he thought might be profitably treated by Provincial Synods. These

[1] These two changes were the result of a request from the Conference at Melbourne on July 27th–28th, 1904, referred to in the next section.

[2] *Proceedings of Conference held 27th and 28th July*, 1904. Melbourne, 1904.

[3] Cp. *General Synod Report*, 1881, pp. 79–81; and 1921, p. 189.

[4] The five Dioceses were Melbourne, Ballarat, Bendigo, Gippsland, and Wangaratta.

[5] Cp. *infra*, p. 277.

[6] *Proceedings of Conference*, p. 5.

included: (i) questions of educational policy; (ii) co-operation with other religious bodies; (iii) days of National thanksgiving and prayer, and appropriate prayers for such occasions; (iv) missionary organization; (v) inter-diocesan questions about Clergy Provident, Superannuation, and Widows' and Orphans' Funds. "We may become to the Church in Victoria what the Convocations of Canterbury and York are to those Provinces, with the additional advantage of a more extended electorate, and the presence of the laity, who, from the first, have played so honoured a part in the Church life of this State."[1]

The chief opposition to the scheme came from the Bishop of Ballarat, Dr. Green, who spoke next. He attacked the scheme for three reasons—

(*a*) He pointed out that the Act 18 Vict., No. 45, Section 17, laid down the principle of voting by dioceses, and made no provision for proportional representation. "I do not think," he said, "that there will be many in this Conference who would give to three smaller dioceses out of five the power to paralyse all legislation within the walls of the Provincial Synod itself."[2]

(*b*) He objected, too, to the recommendation of the General Synod (Clause 7) that a Province once constituted should be unable to change its extent. Conditions might arise when a redistribution of dioceses among the Provinces would be highly desirable.

(*c*) Still greater objection did he feel to the necessity of a diocese being pledged by the Primate to becoming a member of the Provincial Synod before the Constitution of that Synod had been decided. "Even in Church matters," he said, "wise men will scarcely agree to sign blank cheques."[3]

A proposed Constitution was then drawn up; but it was not till the following year that all the obstacles to the creation of the Province had been removed; and Victoria was constituted a Province on November 14th, 1905, practically on the basis of the originally proposed Constitution.[4] The Provincial Synod is to consist of two Houses,—the House of Bishops and the House of Representatives. These Houses shall sit together, but vote separately. (Clause 3.) The members of the House of Representatives are to be elected on the basis of proportionate representation.

[1] *Proceedings of Conference*, p. 7. [2] *Ibid.*, p. 9. [3] *Ibid.*, p. 10.
[4] The Constitution is given as Document M.

(Clause 4.) These Synods shall take place at intervals of not more than three years, " but the Metropolitan may at his own discretion, and shall at the request, in writing, of a majority of the other Bishops of the said dioceses, summon at any time a session of the Provincial Synod." (Clause 5.)

No ordinance of the Provincial Synod may contravene any Determination of the General Synod. (Clause 8.) The Determinations, moreover, are not binding on the Dioceses until accepted by them, except in the case where " any matter be referred to the Provincial Synod by any Diocesan Synod, the decision of the Provincial Synod shall be binding on the diocese so referring the same." (Clause 8.) Alterations, except such as are in conformity with those made by competent authority in England, cannot be made in the Articles, Liturgy, or Formularies of the Church. (Clause 9.)

Such, in outline, are the main points of the Constitution of the Province of Victoria. For the Constitution in full, reference must be made to Document itself.

VIII. The Work of a Typical Diocesan Synod

The Synod is the supreme ruling power in each diocese of the Province, and the Bishop, Clergy, and Lay officials are all bound, on being admitted to office, to make a declaration to obey the Acts of Synod.

The Synod consists of (i) the Bishop; (ii) the Clergy; (iii) the Laymen, as three separate Houses whose joint approval is required for every Bill, Regulation, or Resolution. Its powers over faith and doctrine are limited. " No Regulation, Act, or Resolution made or passed at any Synod shall be valid which shall alter or be at variance with the authorised standards of faith and doctrine of the Church of England, or shall alter the oaths, declarations, and subscriptions now by law or canon required to be taken, made, and subscribed by persons to be consecrated, ordained, instituted, or licensed within the said Church."[1]

Subject to these limitations, it has almost unlimited power. Questions of faith, doctrine, and worship are not decided in Synod, but, in general, by the Bishop. The Synods have always remembered that the office of a vicar must be one of independence, and his position in consequence is equally secure as that of the English vicar or rector;

[1] *Acts of Legislative Assembly of Victoria*, 18 Vict., No. 45, Section 5 (Document L, pp. 247–251).

indeed, if the present tendency and trend of legislation by the Church Assembly in England be persisted in, the position of the Australian vicar will be more assured and certain than that of the corresponding office of his brother priest in England. The Australian vicar is protected by legislation, and his office safeguarded by all reasonable restrictions, while the freest power is accorded to him in all spiritual and pastoral work. Subject to the Acts of Synod, he is essentially a constitutional ruler and not an arbitrary one. When an Act is once passed, because the vicar and the representatives of every parish have had a voice in passing it, there is the same willing obedience to it as to an Act of Parliament. Difficulties and disputes occur from time to time in Church life, but in the long experience of seventy years, Synods, through their legislative powers exercised without any interference from the State, face the emergencies and find a practical solution for the problems as they arise. Moreover, the laity in their recognized position in Synod (as well as in diocesan and parochial life generally) have contributed to form a united voice of clergy and laity in all temporal affairs, and to express the corporate mind of the Church throughout the diocese. There is to be seen, however, a substantial difference between the legislation of the Diocesan Synods and that of the more recently constituted Church Assembly in England. The Australian Church is practically dependent upon voluntary contributions in contrast with the endowment system of the Church at home, and hence the Acts of Synod in Australia portray a definite desire to assist the clergy ; the tendency, on the other hand, of the measures passed thus far by the Church Assembly is to impose a financial burden—e.g. dilapidations, pensions—upon the clergy. The laity in England, accustomed to live on the dead hand of the past, no longer recognize the full meaning, like their brother laymen of the Antipodes, of the duty of shouldering the temporal responsibilities attached to their office.

The proceedings of the Synods in the debates on Bills follow strictly Parliamentary procedure, with first, second, and third readings, and the committee stages ; in this way, accurate legislation is secured. In the Province of Victoria the official Bills are prepared by a Law Committee, though private bills can be introduced by any member of the Synod. The Bishop usually assents to the Bill, and constitutes it an Act ; but if his assent is not given, the Bill lapses, and

does not become an Act.[1] Every clergyman in the Diocese holding the Bishop's licence is summoned to the Synod, and the representatives of the parish are chosen in accordance with regulations which give more than one representative in the case of parishes with a larger Electoral roll.

To give some idea of the work of a Diocesan Synod it is proposed to enumerate here some of the legislative Acts passed by the Diocese of Ballarat. There are good reasons for choosing a Diocese other than that of Melbourne, in which, being the See of the capital city, the conditions are hardly representative.[2]

Amongst the Acts[3] passed at various times by the Synod (or as it was termed in earlier days, Assembly) of that Diocese, the following are selected at random :—

(*a*) Bishopric Endowment Act.
(*b*) Cathedral Church Act.
(*c*) Clergy Appointment Act.
(*d*) Clergy Widow and Orphans' Fund Act.
(*e*) Parochial Church Schools' Act.
(*f*) Sustentation Fund Act.

A further example, of which it may be worth while giving a somewhat detailed summary, is " An Act to provide a Constitution for St. Aidan's Theological College," passed on June 11th, 1913. After citing the title and stating the object of the College, namely, " to provide for the training of Candidates for the Ministry of the Church of England in the Diocese of Ballarat and Candidates for the Ministry of the Church of England in other Dioceses " (Sections 1 and 2), the Act proceeds to legislate for " the management of all temporal affairs appertaining to the College." (Section 3.) This management was vested in a Council, consisting of the Bishop as President *ex officio*, three Clerks, and three Lay Communicants, to be elected at the first session of each successive Synod of the Diocese. (Section 3.) Section 7 appoints the Bishop, Warden of the College, and conveys to him the power of appointment of the Sub-Warden.

[1] In Western Australia, on the other hand, if the Bishop withhold his assent, appeal can under certain circumstances be made to the Provincial Synod. Cp. p. 127.

[2] Ballarat, besides being the largest of the then four remaining Dioceses in Victoria, happens to be that of my ordination; and, hence the Diocese with which I am most familiar.

[3] *Acts of the Synod of the Church of England in the Diocese of Ballarat*, 1910.

Section 10 provides that the Warden may terminate the appointment of the Sub-Warden with the consent of an absolute majority of the Clerical Canons. Section 11 provides for the appointment, in the event of a vacancy, to the Sub-Wardenship, of a Clerk who shall be nominated to the Council by the Warden, "and unless the nomination be disapproved by an absolute majority of the Council, the Clerk so nominated may be appointed." Section 13 determines the powers and duties of the Council—(1) To decide upon the number of lecturers, officers, and servants of the College. (2) To fix all salaries and allowances. (3) To provide for the protection and maintenance of the College property. (4) To fix the amount of fees to be paid by Students. (5) To see that all accounts are kept. (6) To make such bye-laws, rules, and regulations for the purpose of carrying out the objects of this Act respecting the affairs of the College. Section 14 states the powers and duties of the Sub-Warden, who shall regulate the duties of all lecturers and servants in the College, and who shall be held responsible for the due execution of the same. Section 15 directs that a Statement of Receipts and Expenditure of the College during the preceding financial year shall be laid before the Synod at its annual Session.

CHAPTER VII

SOUTH AUSTRALIA: AN EXAMPLE OF "CONSENSUAL COMPACT"

I. Preliminaries, Bishop Short's Tractarianism

THE Church in South Australia affords in some ways the best example of a Church constituted on the basis of consensual compact; though it needs to be borne in mind that even at the present day there are only two Dioceses in the State and consequently there is no Province.

Bishop Short had, of course, participated in the 1850 Sydney Conference; but when he returned to his Diocese with a view to bringing the resolutions of that Conference into effect, he was faced with considerable opposition. To account for its origin, it is necessary to bear in mind the circumstances of the Church at that time.

Short had always had definitely Tractarian sympathies. In an essay on *Tract XC*, written while he was Vicar of Ravensthorpe, Short wrote, "I have now gone through the various parts of the Tract, and on the whole do not see how its explanations are either foreign to the 'literal and grammatical sense' or to the Convocation of 1662 [*sic*], from whose authority we receive them; or are consistent with 'Roman Catholic errors.' That the views propounded are Catholic and so in harmony with the Prayer Book is most true; that they savour of Melanchthon rather than Luther is also true; but that the author has perverted the Articles, I for one cannot allow, because they were expressly framed for the purpose of comprehending a large variety of opinion —excluding only certain palpable errors and affirming certain extreme truths."[1] It was hardly possible for anyone who was not himself a definite Tractarian to acquit the author of the famous tract of having perverted the Articles.[2]

[1] Quoted, F. T. Whitington: *Augustus Short. First Bishop of Adelaide.* London, 1888, p. 40.

[2] It is interesting to note that the general sympathies of the Dioceses in South Australia have always been, and still are, Anglo-Catholic.

Now it has been pointed out earlier that at the time of the 1850 Conference the whole Church was aroused by the Gorham Judgment, and that any attempt at Synodical Government tended to be regarded as an assertion of Sacramental views.[1] We are not surprised, therefore, to find that many Evangelical laymen of the Diocese regarded the creation of a Diocesan Synod as only one more step in the direction of Short's disliked Tractarian policy. On January 16th, 1851, there was convened in the Bishop's absence a meeting of the " South Australia Church Society " to discuss the question.[2] The meeting, however, soon broke up, as the result of a discussion on Baptismal Regeneration, which was described by one member as a " priestly miracle,"[3] and it was only at a later meeting held on January 28th[4] that the real question was discussed. Strong opposition was displayed towards the 1850 proposals. A resolution carried was to the effect that " as members of the Protestant Episcopal Church of England in South Australia and desirous to pay proper deference and respect to the Lord Bishop of that Diocese, we totally and absolutely repudiate any assumption of ecclesiastical authority by the Church in this Province, and solemnly protest against any attempt on their part to exercise the same."[5] One speaker said,[6] " We do most emphatically deny their right (i.e. of the Bishops) to meet in Sydney with all the solemnity and assured authority of a Synod or Convocation, which the constitutional law does not allow ; and we deny in the same most emphatic manner their right to promulgate any document like the Sydney minutes, which, although put forth under the modest garb of mere opinions, bears evidence enough within it what effect it is intended to produce." Another said,[7] " A bold high-handed attempt is being made by the Bishops, not only for ecclesiastical authority, but for secular power ; and I think it behoves every man to whatever denomination of Christians he may belong, to throw his whole weight into the scale, to nip their aspirations now, while they are in the bud." Such was the feeling

[1] Cp. *supra*, p. 81.

[2] The minutes were published in a pamphlet : " *An account of the Proceedings of the Laity of the Church of England in South Australia ; occasioned by the publication of certain minutes of a meeting held at Sydney by the Australasian Bishops in October*, 1850." Adelaide, 1851.

[3] p. 16.

[4] In which further recriminations were uttered on those who held the doctrine of Baptismal Regeneration.

[5] *Ibid.* [6] *Ibid.*, p. 43. [7] *Ibid.*, p. 47.

which Bishop Short had to combat in certain quarters of his diocese.

II. The Petition to the Queen

But eventually the Bishop succeeded in winning the confidence of his Diocese. There was little doubt in his own mind that the path of "consensual compact" was to be followed. As early as 1851, all grants from the State purse to the support of religion were withdrawn.[1] At length, a proposed constitution[2] was drawn up; but even so the 1533 Act prevented its taking effect without the Royal Assent. A memorial was therefore compiled to be sent to the Queen. In this it was declared[3] "That the body of English ecclesiastical law has not yet been adapted to the wants and necessities of the Church in the Colonies; that the jurisdiction of the bishop over the clergy is left without any prescribed form of process: that there is no prescribed form or mode of appeal to the metropolitan, or of giving effect to the sentence of his court: that the periodical meeting of the bishop, clergy, and laity in diocesan assemblies is as yet unauthorised by the supreme authority of the Crown." And the memorialists requested the Queen "to sanction such diocesan meetings of the bishop, clergy, and laity, and to empower them to make and give effect to such rules and regulations as may be deemed expedient for the better government of the Church in this colony and as may be consistent with the doctrine and discipline of the Church of England, and the lawful supremacy of the Crown."

In February 1853, Bishop Short went to England with this petition. The result was the ill-fated Bill of Archbishop Sumner. But when the draft Constitution of the Diocese was placed before several high legal authorities[4] the reply was that it was possible for a Colonial Diocese to organize itself in this way without Imperial legislative powers. Believing there were now no legal obstacles to the carrying into effect of the scheme, Short returned to Australia; the Constitution was discussed in the parochial vestries of the different parishes; and in October 1855, the synodical compact was submitted to, and ratified by, a Diocesan Assembly at Adelaide. It received the signatures of the Bishop, clergy, and elected lay representatives.

[1] Cp. p. 144. [2] Document O. [3] Document P.

[4] Cp. Whitington, *op. cit.*, p. 145. They were Sir R. Bethell, Sir Fitzroy Kelly, Sir Joseph Napier, Mr. A. J. Stephens.

III. The Diocesan Synod

The Constitution of the Diocesan Synod is to be found in an Appendix.[1] The document is of considerable length, and is prefaced by a long preamble. Then follows an important Declaration :—" The Diocese of Adelaide, in South Australia, is a part of the United Church of England and Ireland ; and doth maintain the Doctrine and Sacraments of Christ, as the Lord hath commanded, and as the said United Church of England and Ireland doth receive the same ; together with the Book of Common Prayer and of ordering of Bishops, Priests and Deacons."

The Synod is to consist of bishops, clergy, and elected lay representatives. Deacons may be present and take part in the discussions, but they may not vote (Clause 1). It is to be the " proper Court for the trial of such offences as may be presented to it by the Bishop " (Clause 2). It is to meet at least annually in Adelaide (Clause 4). A quorum of a quarter of the Synod is necessary (Clause 6). The alteration of any of the fundamental provisions of the constitution necessitates the assent of the Bishop, and that of at least two-thirds of the Clergy and Synodsmen present, voting by orders (Clause 7). In the case of questions concerning the appropriation of funds, voting is not by orders (Clause 8). The later sections of the Constitution deal with questions of parochial organization, discipline, and a body of trustees.

The first Synod which met under this Constitution was held at Adelaide on April 29th, 1856.[2]

IV. The Legal Value of the Synodical Determinations

In his pastoral address to the Synod in 1858, the Bishop discussed the whole question as to the legal position of the assembly. There is a long extract from this address in Archdeacon Whitington's book.[3] It is impossible to quote it all here, but a few extracts may be given : " It would be [as ?] absurd, on the one hand, for any Diocesan Synod, assembly or convention, to attempt to make decrees binding upon other parties than those who voluntarily enter into

[1] Document N.

[2] Considerable amendments have been made to the Constitution since that date. In its present form, it may be found in H. L. Clarke : *Constitutional Church Government*, pp. 159 ff.

[3] *Op. cit.*, pp. 146 ff.

the compact, as it is on the other, to deny the legality of such Synods making bye-laws binding on the bishop, clergy, and laity who shall agree to abide by them."[1] And then, discussing the powers of holding property, the Bishop said: "It is surely proper, then, that the specific trusts on which such property is held should be declared, embracing, of course, the fundamental principles of our Reformed Episcopal Church, her acknowledged doctrines and the liturgical offices and ceremonies which she has inherited from Christian antiquity. On the one hand, it would be useless to declare rules and principles without making the property assigned for the support of the Church subject to those rules; and on the other, to put property in trust for the benefit of the Church of England without specifying the distinctive principles of that Church, and the mode whereby adherence to those principles by the ministers and officers of the various congregations shall be secured, will only sow the seeds of future dispute, litigation, and possible disruption. Without some such system, diocesan union is nominal rather than real, and the Scriptural authority of the bishop exposed to undue impediments whenever it may become necessary to bring it into exercise."[2]

A test case as to the legal powers of the Synod was soon to come up. One of the clergy of the Diocese, who had been suspended from his office for drunkenness, claimed to be tried under the disciplinary clauses of the regulations of the Synod. He was condemned, and, in consequence, brought an action for libel against the Synod, in the civil court. But the civil court contended that, as the clergyman had claimed to be tried under the Bishop's court, he had made himself a party to any decisions that they should determine; and, consequently, the action for libel was unsuccessful.

But even this did not satisfactorily settle the question of the authority of the Synod in instances when offenders came up for trial who had not made themselves a party to that court. In 1862, an attempt was made, therefore, to pass a Bill through the Adelaide Legislative Assembly with a view to obtaining parliamentary sanction to the Synod Constitution. The Bill was rejected on the grounds that a civil court could not interfere in a purely denominational matter. But a way out was soon found. Before the Bishop's licence was issued to any clergyman, the holder was first required to sign a legal document that he held his office in

[1] *Ibid.*, p. 148. [2] *Ibid.*, pp. 148 f.

the Diocese subject to the Synodical Laws, and was bound, in consequence, by the disciplinary regulations of the Synod.[1]

V. The South African Cases

Some reference to the South African Cases is of value here, because, though they did not concern the relations between the South Australian Government and the Church, they occasioned important decisions of the Privy Council.[2] They led to the pronouncements from the Privy Council that, "the Church of England, in places where there is no Church established by law, is in the same situation with any other religious body—in no better, but in no worse position; and the members may adopt, as the members of any other communion may adopt, rules for enforcing discipline within their body which will be binding on those who expressly or by implication, have assented to them."[3] In this way any legal disabilities that might be thought to attach to a Synod, built up on the basis of consensual compact, would appear to be removed. Mr. Spencer Holland, an English barrister, states in his book on the Ecclesiastical Courts Commission, when commenting upon the South African case of Merriman *v.* Williams—"Any Acts, or Legislative Consent to ordinances, which the Australian Churches may have applied for, are merely private Acts for their own corporate recognition by Courts of Law, and must not be thought in any way to confer any special legislative power or jurisdiction more than those with which other corporations are entrusted. . . . A coercive jurisdiction is the criterion of a public court. This, no Church tribunal in the colonies possesses."[4]

[1] Cp. Whitington, *op. cit.*, p. 152.

[2] These Cases are also discussed on pp. 72 f. in their bearing on the validity of Letters Patent.

[3] Phillimore: *Ecclesiastical Law*, 2nd Edition (1895), p. 1783.

[4] Spencer L. Holland: *A Summary of the Ecclesiastical Courts Commission's Report* (Oxford and London, 1889), p. 284.

CHAPTER VIII

NEW SOUTH WALES

I. The First Stages

WE have seen that there were, following the 1850 Conference, two courses open to the Church in every Colony. She could proceed either by the road of "legislative enactment," or that of "consensual compact." Though there was not at that date any ecclesiastical legislative bond between the Dioceses of Sydney and Newcastle—for the Province of New South Wales, with which we are familiar, was a creation of later date—it was natural that the two Churches within the same civil Colony should act in conjunction. They did; but Tyrrell of Newcastle, whose presence had made its mark throughout that Diocese, began to formulate a policy making for greater diocesan unity, and definite action was taken by him towards this end.

But it was not till the beginning of 1852 that serious steps were taken in the Diocese to carry the 1850 proposals into effect. A meeting of Broughton and Tyrrell took place in Sydney from February 18th to March 1st of that year. Following on this meeting, Broughton sent a circular to the clergy of his Diocese, urging them to lay two papers before the Diocese. The first was a declaration of Assent to the action of the six bishops, and a request that the Queen should be petitioned to remove the disabilities in the way of synodical government. The second was a draft of the petition itself.

As the Bishop stated in the circular, the purpose of the papers was to enable the Laity throughout the Diocese "to express their opinion concerning such measures, and to unite with their Clergy in carrying the same into effect so far as they meet the Laity's approval."[1] He considered this course "to be the most cautious and safe, and also to be most in agreement with that order by which our Church

[1] Cp. Boodle, *op. cit.*, p. 123.

affairs are at present regulated, while it affords ample scope for the expression of the opinion of the Church as to the wisdom and necessity of that system which its chief Pastors in this Province have recommended."[1]

The reception of the proposals was similar to that in Adelaide; indeed, the suggestion may be ventured that it was directly inspired from that quarter. Here, too, the laity were particularly hostile, and they summoned a meeting at which the bishops were denounced as grasping at power, just as the laity at Adelaide had done.[2] The Baptismal doctrine set forth was also the cause of much bitter feeling. Even those who were not members of the Church of England joined in the contest, and one such Minister urged "that, if legislative authority be given to enforce discipline, either by *fine*, *imprisonment*, or *capital punishment*, to any one of the Protestant Churches, such legal authority cannot justly be withheld from all, nor from the Roman Catholic Church, and thus would be legalized the order of the Jesuits and the Inquisition with all its horrors, to enforce discipline to the great *discomfort* of that portion of your Majesty's subjects, and to the great danger of civil and religious liberty."[3]

These views, however, were not destined to triumph, as the majority concurred in the view that the Queen should be petitioned to remove the disabilities under which they suffered.

In Newcastle, the state of opinion was less hostile, largely owing to the great personal affection which existed towards the Bishop. At the first meeting of the newly formed "Newcastle Church Society," held on May 6th, 1852, Bishop Tyrrell expressed his views on the question of the formation of a Synod. He felt that the first step should be the sending of a petition to the Queen to form a Commission, which should treat the matter with reference to the other Colonial Churches. To his gratification, he found that the Metropolitan had arrived, independently, at the same conclusion,—sentiments which he—Tyrrell—expressed in a letter of about that date :—[4]

"I have been surprised and gratified to find from a long, important letter which the Bishop of Sydney has written to me, that, after all the discussion and irritation in his Diocese, . . . his Lordship now sees that the first step he

[1] Cp. Boodle, *op. cit.*, p. 123 [2] Cp. *supra*, pp. 98 f.
[3] Boodle, *ibid.*, p. 124. [4] Boodle, *op. cit.*, p. 126.

must take in England—the first and principal thing which he must endeavour to bring about—is the appointment of a Commission by the Queen, the point we had previously arrived at without any strife or disunion."

Broughton now sailed for England. He appears to have been unaware, however, when he left, how the matter was progressing in the Home Country.[1] His death only about three weeks after his arrival in England prevented his seeing his wishes realized. But his visit was not altogether in vain, for he had been able to communicate with Mr. Gladstone and to visit Archbishop Sumner prior to the introduction of the latter's Bill.

II. The Draft Bill

It was not till three years after the arrival of Bishop Barker, Broughton's successor, that the matter was again taken up. In the meantime, the Church Assembly had been constituted in Melbourne,[2] and it was not without good judgment that the Metropolitan decided, towards the end of 1857, to visit that Diocese to see how the Constitution was working in Victoria.

Early in 1858, not long after his return, he requested Sir William Burton, a Judge of the Supreme Court, Mr. Alexander Gordon, and others, to prepare for the Legislature a Draft Bill on the Constitution of Synods, which he might first submit to conferences in the Dioceses of Sydney and Newcastle respectively. As a basis, he laid before them the Constitutions of the Synod of New Zealand and of the Church Assembly of Melbourne. The Bill was duly prepared towards the end of the year for submission to the conferences.

The Sydney Conference sat from November 24th till December 1st (1858). Two of its members, Sir William Burton and Canon Allwood, were altogether opposed to submitting the Bill to the Legislature. All that they thought advisable was that an "Enabling Bill" should be passed, "enabling" the Church to form Synods which could pass valid legislation. But the general feeling was that the legislation itself should be sanctioned by the State; and, after certain amendments had been made, the Bill was handed to the Conference at Newcastle (which met on December 15th–16th). There, it was adopted unanimously, apart from one further amendment (which was also unanimously carried), namely, that as soon as three Dioceses were

[1] Cp. pp. 99 f. [2] Cp. *supra*, p. 99.

created in New South Wales, it should be not only *in the power of*, but *compulsory* on the Metropolitan to summon a Provincial Synod.

Tyrrell, at this date, regarded an Enabling Bill, and still more a Constitution on the basis of "consensual compact," "a mere rope of sand."[1]

The Draft Bill in its final form was introduced into the Legislative Council in 1859, though as a private Bill. It had been before a Select Committee which gave it a form with which both dioceses were in agreement. In the Legislative Council, however, it was so altered that it was ultimately rejected, and thus the history of the development of Constitutional Government in New South Wales remained at a standstill for several years.

We cannot do better than quote here a letter of Bishop Tyrrell to his biographer, dated April 19th, 1861 :—[2]

"Can you imagine my dismay at finding that the Committee of the whole House, just before the third reading, made an alteration in the veto—really at the suggestion of ——, without consultation with me, or even with the Sydney Conference Committee, limiting the Bishop's veto in his Diocesan Synod to spiritualities, when the Bishop himself and Sir Alfred Stephen had said in their evidence that spiritualities would never come before the Diocesan Synod. Last week I went down to Sydney to arrange what was to be done ; when I insisted that the Bill with such a change must be referred back to the Church. Consequently, it has been withdrawn, there being no prospect of its passing the second reading in the Lower House, or, if it had, that it could have been carried through all its stages before the prorogation, which was at hand. Thus all acquiescence in the Parliament legislating *for* the Church in important points of the constitution of her Synods, *without the sanction of the Church*, has been avoided."

The refusal to accept the altered Bill was welcomed no less by Selwyn, as shown in a letter to Tyrrell,[3]

"Auckland,
"*June 6th*, 1861.

"My dear Friend and Brother,

"Your letter of May 3rd is now before me, . . . I have watched the progress of your Synod Bill with great

[1] Cp. Boodle, *op. cit.*, p. 184.
[2] *Ibid.*, p. 185.
[3] *Ibid.*

interest, and could not avoid anticipating its fate. Our dear departed friend had left behind him a legacy of rooted opposition to the *veto*. When this came to be proposed to the Legislature, it was likely that all the old feelings would be revived. I think that you did quite right in refusing to recognise the altered Bill. All the other Diocesan Synods having given a veto to each of the three orders, it was unreasonable that Sydney and Newcastle should be exceptions. —Your very affectionate friend and brother,

"G. A. New Zealand."

III. Barker and Tyrrell differ

In the several years' interval which elapsed before the work of the formation of Synods was resumed, another Diocese was constituted in the Colony of New South Wales, namely, that of Goulburn (1863).[1]

As there were now three bishoprics in the Colony, Tyrrell urged that the Church should take common action as a Province in framing a Constitution for itself.[2] For the State to give its assent to all the details of Church Government was, he urged, quite unnecessary; all that the State need do was to pass an "Enabling Act," such as would apply equally to all religious bodies to allow themselves to organize on their own basis. In a letter addressed at this time to the Clerical and Lay Representatives of his own Diocese, Tyrrell says—"You will, I think, agree with me that, as in the New Zealand Church, we require: 1st, to draw up and adopt a Church Constitution based on *consensual compact*, and applicable to the whole Church of England in this Colony. Therefore *not* a *Diocesan* Constitution, but a *General* or *Provincial* Constitution: and 2nd, to obtain from the Legislature *only a Trust Act* like the New Zealand Trust Act; in the preamble of which our Church Constitution, with its Governing Body, the Provincial Synod, may receive Legislative recognition."[3] Before long, Tyrrell came to doubt whether even an Enabling Act were an ideal. Certain events had taken place recently which he tended to regard as rendering an appeal to the State for legislation unnecessary and even vicious. He

[1] It is interesting to observe that Goulburn was the last town in Australia to become a "city" by Royal Mandate, by virtue, of course, of its being the See town of a Diocese created by Letters Patent.

[2] The term "*Province*" was first introduced in the Resolutions passed at the 1850 Conference.

[3] Boodle, *op. cit.*, pp. 210 f.

expressed disapproval of the decisions of the English Law Courts relative to the judgment of the Judicial Committee of the Privy Council in the Long *v.* Bishop of Cape Town case.[1] He recognized that the State itself was tending to throw off its functions as *protégé* of the Church ; for in 1862, it had passed a " Bill for the Gradual Abolition of State Aid "[2] to the Church. He had now before him the examples of New Zealand[3] and of South Australia[4] which had organized themselves on the basis of consensual compact, and the plan appeared to be working satisfactorily in those Colonies. No longer did he regard, as he had previously done, a Church Constitution without State sanction " a mere rope of sand " ; it became, if we may develop this not too pleasing metaphor, a " rope of concrete."

Barker, however, held other views. In 1862, he paid a visit to the Home Country, and there had the opportunity of discussing the subject with some Canadian bishops.[5] There was no longer any doubt left in his own mind that an Enabling Bill was necessary.

Barker was, therefore, not a little disconcerted on his return to his Diocese to find that Tyrrell had, in the meantime, developed absolutely diverse views. But Barker refused to give way ; and Tyrrell, wisely seeing the need for unity of action, waived his own beliefs, and prepared to co-operate with Sydney in yet another attempt to secure the aid of the Legislature. But here the question rested for two years.

IV. The Conference of February, 1865

i. A Sydney Diocesan Conference was held on February 7th, 1865, at which it was proposed on the agenda sheet to thrash out the question—" Shall, or Shall not, an Enabling Bill be asked for ? " It might have been hoped that, at any rate, some definite course of action would be agreed upon at this Conference. Curiously enough, as it appears on the surface, this subject was hardly discussed. The Metropolitan merely stated his preference for such a Bill, but said that he did not regard it as essential. A Committee was appointed to draw up " Fundamental Constitutions for the United Church of England and Ireland " in the Colony.

ii. When Tyrrell saw that Barker was wavering in his

[1] Cp. Boodle, *op. cit.*, pp. 203 f.
[2] New South Wales Statutes, 26 Vict., No. 19.
[3] Cp. Boodle, *op. cit.*, p. 210.
[4] Cp. p. 99.
[5] *Ibid.*, p. 197.

views, he became much more insistent on his own. On hearing of the proposals of the Sydney Diocesan Conference, he informed Barker, that he, too, would call a Diocesan Conference, but that he would guide this Conference towards Provincial action as he still felt the need and value of unity of procedure. The Conference accordingly assembled at Newcastle on February 24th and passed resolutions—(a) " That the Enabling Bill is not required in the present circumstances of the Church, and therefore does not receive the sanction of [this] Conference ; " and (b) " That a *select* Committee be appointed with power to confer with similar Committees in the Dioceses of Sydney and Goulbourn."[1] Co-operation, of course, was intended with the Committee appointed by the Sydney Conference.

Unfortunately, the Newcastle Resolutions were passed too late. When the Sydney Committee were informed of them, they had already drawn up a Constitution for that Diocese alone ; and no reference whatever was made to the other dioceses in the Colony.

Another Diocesan Conference held at Sydney accepted their proposals ; and a Bill was therefore submitted to the Legislative Assembly to give the Church in that Diocese the necessary powers. The Bill, however, was never passed, mainly because of a petition from Tyrrell, who, at all costs, wanted, as we have seen, common action.

V. Provincial Action

On August 15th, 1865, the Diocesan Synod[2] assembled again at Newcastle, on which occasion it carried a resolution " that it is highly desirable that a Conference of Bishops and clerical and lay representatives of the Church in the three dioceses of the Colony of New South Wales should be held in Sydney for the purpose of considering and determining what form of Constitution should be adopted for the good government of the Church in the Colony ; and also on what points it is desirable to apply for legislative sanction."[3] Another resolution followed, in which the Metropolitan was requested to summon such a conference ; another appointed from their number four clerical and four lay members to represent them at the proposed conference.[4]

When Bishop Barker had been informed of these proposals,

[1] Boodle, *op. cit.*, p. 200.
[2] This was the first time that the Conference so designated itself. *Ibid.*, p. 201.
[3] *Ibid.*, p. 204.
[4] *Ibid.*

he intimated them formally to a Diocesan Synod at Sydney on September 26th, 1865. The Synod agreed to the proposal for the Provincial Conference; but it was determined that its powers should be strictly limited; indeed, it removed from its own Constitution, doubtless acting on the advice of the Metropolitan and Chancellor, all mention of the establishment and powers of the Provincial Synod; and now bound its representatives at the forthcoming Conference not to alter, or allow its Constitutions to be altered in any respect.[1] Goulburn was equally determined not to abandon any of the powers of its own Synod to that of the Province; and at a Synod held there in December 1865, followed the example of Sydney, and made it clear to its representatives that they, too, should go with their hands tied.

Newcastle, on the other hand, was relentless in the desire to confer real powers on the Provincial Synod. It adhered to the proposals of the Draft Bill of 1858, which, it will be remembered, had made definite provision for the Provincial Synod. Its own Diocesan Synod, moreover, had, in its Constitution, clauses relative to the proposed Provincial Synod. But it did not bind its representatives in quite the same way as did the other two dioceses; for while it drew up Draft Constitutions, it gave to the representatives freedom to alter them, should the majority of the Synod so wish.

VI. The Provincial Conference and the Passing of the Legislative Bill

The Conference finally met on April 11th, 1866. A Committee was forthwith appointed to draw up the Constitutions. In them, the members of the committee agreed to include the provisions of the 1858 Draft Bill; but they really divested the Provincial Synod of any effective powers, since any Diocesan Synod could stop Provincial action by holding aloof.[2] Such a limitation of the powers of the Provincial Synod was, of course, highly distasteful to Tyrrell; but he was willing to submit in the hope (which proved a vain one) that these provisions were only temporary.[3]

Agreement was ultimately obtained. Tyrrell, now that common Provincial action had been reached, at least in

[1] Cp. Boodle, *op. cit.*, pp. 207 f.

[2] We shall see later that the same principle was behind the Constitution of the General Synod.

[3] Cp. Boodle, *op. cit.*, p. 212.

name, was prepared to give way. Accordingly, resolutions were passed, proposing that a Bill should be sent to the Legislature for the purpose of securing two distinct objects—(i) The practical working of the Diocesan Constitutions; and, (ii) The Management of Church property in accordance with these Constitutions.

The Bill was sent; and in 1866 was passed through the New South Wales Legislature, "An Act, 30 Vict., to enable the members of the United Church of England and Ireland in New South Wales to manage the property of the said Church under which the Constitutions were made binding for all purposes connected with Church property" (dated October 4th, 1866). The Constitution of the Diocesan Synod, was, however, only registered in the Supreme Court, not dependent upon Legislative sanction.

VII. The 1866 Act

The Act of 1866 is substantially that which binds the Church in New South Wales. There have, indeed, been certain modifications of this Act, and further legislative measures subsequent upon it. The latter include—

(*a*) The Church of England Trust Property Incorporated Act of 1881.
(*b*) The Sydney Bishopric and Church Property Act of 1887.
(*c*) The Church of England Property Act of 1889.
(*d*) The Church Acts Repealing Act of 1897.

But these are not of much importance.

VIII. The 1902 Act

This Act repealed the 1866 Act and replaced it with another with the less cumbrous title of "The Church of England Constitution Act," and is substantially that which binds the Church of England in New South Wales at the present time (1928).[1]

It was occasioned by some resolutions passed by the Executive Committee of the Provincial Synod of the State. Formal assent was granted also to the Constitutions of the Diocesan Synods which had been proposed by the Executive Committee; yet it is interesting to note "the several

[1] The chief change made by the 1902 Act was the substitution of the title "Church of England" for the name hitherto used—"Church of England and Ireland."

articles and provisions proposed . . . are and shall be *for all purposes connected with or in any way relating to the property* of the Church of England within the State of New South Wales binding upon the members of the said Church."[1]

The State was unwilling now to interfere more than necessary in the internal affairs of the Church. A Schedule drawn up by the Executive Committee of the Provincial Synod relative to the Constitution of Diocesan Synods was appended to the 1902 Act. It will be found in H. L. Clarke's *Constitutional Church Government*, pp. 131–136.

IX. The Constitution of the Provincial Synod

The New South Wales Provincial Constitution has undergone a number of changes since it was originally drawn up. In 1907, many important alterations were made, and this, apart from changes in the mode of representation, is as it stands at present.[2] Section 1 appoints the Bishop of Sydney as *ex officio* Metropolitan ; Section 2 determines that it shall consist of two Houses, the House of Bishops and the House of Representatives. They shall sit together, but vote separately ; Section 3 lays down the method of proportionate representation, the number of clerical, being always equal to the number of lay representatives ; Sections 4–7 deal with the place of session and the rules of procedure, etc. ; Section 8 is important, and must be quoted in full— " The Provincial Synod shall have power to make Ordinances upon and in respect of all matters and things concerning the order and good government of the Church in the Province. Provided that no Ordinance save as is next hereinafter provided shall be binding upon the Church in any Diocese, unless and until such Ordinance shall be accepted by the Church in such Diocese by an Ordinance of its Synod. Provided, however, that any Rule or Ordinance passed by any Diocesan Synod to which the Bishop of that Diocese shall not assent may be the subject of reference by such Diocesan Synod to the Provincial Synod, and the decision of the Provincial Synod with reference thereto shall be binding on the Church in the Diocese so referring such Rule or Ordinance." We see here how strictly the powers of the Provincial Synod were limited. Section 9 provides for no alteration being made by the Provincial

[1] Church of England Constitutions Act Amendment Act, 1902, Section IV.

[2] The Constitution may be found in Lowther Clarke : *Constitutional Church Government*, pp. 113–116.

Synod in the Articles, Liturgy, or Formularies of the Church except in conformity with any alteration which may be made therein by any competent authority of the Church of England in England ; Section 10 provides that no rule, ordinance, or determination shall contravene any State laws ; Section 11 allows the delegation of synodical powers to committees ; Sections 12–16 deal with the mode of voting, etc., the procedure in the absence of the Metropolitan or any other Bishop, and the power of altering the Constitution, and make Sections 9 and 10 of the Constitution irreformable. The last section, Section 17, provides for the sending of a copy of all ordinances passed by the Provincial Synod to the Archbishop of Canterbury.

CHAPTER IX

TASMANIA

I. The First Bishop

As we saw above[1] it was on August 18th, 1842, that the first Letters Patent were issued, creating the Bishopric of Tasmania. The Church in the Colony was thereby freed from the jurisdiction of the Bishop of Australia, and it was only in 1847, when Broughton was created Metropolitan, that there were further Letters Patent issued, placing the Tasmanian Church under the control of the Bishop of Sydney again.

In Tasmania, as in other states, the problems connected with the organisation of the Church were matters of serious controversy. From the day of Bishop Nixon's arrival he was faced with difficulties. The military Chaplains had been state officials, paid by the Government and controlled by the Archdeacon, subject to the Governor. It was therefore not unnatural that some of the Governors should try to control the Bishop as another servant of the State in the same way. Much controversy with the authorities ensued and large sections of the non-ruling part of the population were equally insistent that the Bishop's powers should be limited. When in 1845 England rang with Newman's secession and, in the years almost immediately following, with the Gorham case, the echoes were not long in reaching Tasmania;[2] hence any claim to spiritual authority was interpreted as it had been on the mainland[3] as a movement towards Rome on the one hand, or as antagonistic to the State on the other, and, therefore the Church must be kept in order and taught a position of subservience. Fortunately, Bishop Nixon was a strong man who knew full well the path to tread, and like his brother-prelates of the 1850 Conference,

[1] Page 69.

[2] For a contemporary document on the question of the Baptismal Doctrines in Tasmania see F. R. Nixon: *Substance of a Reply to a Deputation . . . . . at Hobart Town* (1852) (London, 1853).

[3] Cp. pp. 98 and 104.

he faced all opposition with a steadfast resolve to secure for the Church powers of self-government.

II. The Church of England Constitutions Act, 1858. (22 Vict., No. 20)

In 1857 Nixon had called together a council of clergy and laity; as a result, a voluntary Synod was convened and Parliament was asked by it to grant powers to enable the Church in Tasmania to control and manage its own affairs. Parliament acceded, and the Constitution Act of 1858 was the result.

This Act gave to the Church in the Colony government "by legislative enactment." Among its most important provisions are the following:—

The Synod shall meet under the presidency of the Bishop (if present), and may pass Acts or Resolutions by a majority vote (Sections 1, 2). Such Acts and Resolutions shall be binding on the Bishop, Clergy and Laity and yet only so far as the Acts (or resolutions) "may concern their respective positions, rights, duties, and liabilities in regard to their office, ministry, membership, or communion in the said Church, or may concern the right of patronage in or management of the property of the said Church" (Section 3). The Synod may establish a tribunal for the trial of offences against Laws Ecclesiastical and other matters (Section 4). The Synod is to be held at least annually (Section 6). The Lay Representatives are to be elected by their parishes ("Cures") in accordance with details laid down in Sections 12, 13; only males, however, are entitled to vote (Section 7). The Representatives have to sign a prescribed declaration of faith (Section 11). The Synod has also the power to appoint "Trustees of the Property of the said Church in whom any lands, hereditaments, rights, moneys, goods and chattels whatever may from time to time be vested for the benefit of the said Church" (Section 15). Section 17 is sufficiently important to be quoted in full: "Every Act and Resolution of the Synod made in pursuance of and in accordance with the provisions of this Act shall be deemed to be incorporated herewith, and shall be of the same force and effect as if the same were expressly enacted herein: Provided that no such Act or Resolution shall affect any right or prerogative of Her Majesty (excepting only the said Right of Patronage), nor any Right of Appeal to Her Majesty in Council, or to the Archbishop of Canterbury, or to the

Metropolitan, nor alter or be at variance with the authorised standards of Faith and Doctrine of the said Church, nor be repugnant to this Act, or to the general spirit and intendment of the laws in force in this Colony." The Acts and Resolutions of the Tasmanian Diocesan Synod, therefore, have the force of law in that Colony.

III. The Church of England Constitution Amendment Act, 1882. (46 Vict., No. 2)

The official name of the Church is here changed from " The United Church of England and Ireland in Tasmania " to " The Church of England in Tasmania " (Section 3). Section 4 empowers the Synod to make provision for the appointment and resignation of Bishops—the plural appears to look forward to a time when the Diocese of Tasmania is divided. Section 6 provides for the transfer of all property at present vested in the Bishop " as a Corporation Sole, or as a Trustee of the said Church " to the Church Trustees. The remaining sections are also concerned principally with questions relative to the administration of property ; thus Section 7 deals with that vested in Archdeacons, etc. and Section 10 gives the trustees in certain cases powers to sell or lease property vested in themselves.

IV. Further Amendment Acts

These two Acts were further amended in 1892, 1899, 1903, and 1905. The two last-named Amendment Acts may be found in Lowther Clarke, *Constitutional Church Government*, pp. 151–156.

The 1899 Act provided for considerable changes. At the second reading of the Bill, the Attorney-General (Hon. D. C. Urquhart) read an explanation of the position in which the Church in Tasmania then found itself, and the necessity for further legislation. " Our old Act," wrote the Bishop (Montgomery), " contains for example, the following details : (1) Those who vote for members of Synod must be males. Some contend that at present we cannot even discuss the question whether women may vote. This power has been given in some dioceses. (2) Election of administrator in the Bishop's absence. Here Synod appoints this person by Act. In every other diocese the Bishop appoints his own *locum tenens* or administrative officer in his own absence. Some consider that we cannot even discuss this subject as the Act stands. (3) In Clause 18 of our first Act, a copy of

our resolutions has to be sent with due formality to the Archbishop of Canterbury, and Her Majesty may disallow such resolution within two years. Since those days it has been decided that the Archbishop has no such jurisdiction. Nor is there any special appeal from here to the Privy Council in Church matters. Were there such appeal it would conflict with our Australian Church organisation. We are now a national Australian Church, with our regular Courts for the trial of bishops, for the trial of heresy, etc. Our Primate, with his assessors, is our Judge of Appeal; and there is no appeal from him to a higher Court; our fundamental laws remain the same, but the Courts have changed."[1] The desired changes in the legislation were introduced almost without opposition.

The Synod had now full power to amend its Acts. Accordingly the "Church of England Constitution Amendment Act (1903)" is an Act of the Synod, and not of the State Legislature. It is concerned mainly with the mode of election of representatives to the Synod. In future, the representatives are to hold office for three years (Section 1), though the Synod is to meet at least once in every year (Section 17). It is far less concise than the earlier Acts and often loses itself in minute details—two defects which seem to manifest themselves inevitably when the power of legislation is transferred from civil to ecclesiastical hands.

[1] *Tasmanian Mail.* Unfortunately the date of issue of the *Mail* from which this extract is taken is missing.

CHAPTER X

QUEENSLAND

I. Introduction

THE date was bound to come when the Diocese of Newcastle, which included all the waste land from the See-town northwards, would have to be divided. Tyrrell himself was never able to visit the country north of Moreton Bay,[1] and it was essential that the regions further north should be under episcopal control. As elsewhere, one of the first preliminaries—and perhaps the most important—was the raising of funds. By September 1858, however, the £5,000 which had been deemed necessary for the erection of the See had been subscribed, and placed in the hands of the Colonial Bishoprics Council.[2] Accordingly in 1859—the year in which the Colony of Queensland was separated from New South Wales (December 1st)—the formation of the new See of Brisbane had been determined on and Dr. E. W. Tufnell had been designated as its first Bishop. The See was actually created in the same year.

II. Conference previous to Synodical Government

A conference was called together—not without considerable opposition, as is evident from the contemporary Press[3]—to consider the desirability of synodical government.

[1] Boodle, *op. cit.*, p. 169.

[2] This Council managed the Colonial Bishoprics Fund. Cp. p. 145. The money had been provided as follows :—

From the S.P.C.K. . . .	£1,000
S.P.G. . . .	£1,000
Original Endowment of the See of Newcastle . .	£2,300
From the *English* Committee of the See of Newcastle .	£ 700
	£5,000

Boodle, *op. cit.*, p. 170.

[3] For the loan of a collection of useful newspaper cuttings containing much valuable material for our purpose, I am indebted to Mrs. Tufnell, Banbury Road, Oxford.

All the clergy of the Diocese, except the Rev. C. Searle of Rockhampton, were present, and a representative number of lay delegates. The Conference, which explicitly disclaimed the title of Synod, sat at Brisbane on September 4th, 5th, and 6th, 1867. At the meeting on the first day the Bishop delivered a long address to the Synod, from which the following extracts are taken.[1]

"I have invited you, my brethren, to this Conference in order that we may take counsel together as to whether we consider that the time has arrived for the adoption of some form of synodical action, and if so, what form we should desire or adopt—whether by legislative enactment or consensual compact; and I need scarcely remind you that in any action that we may take, in order for that action to be effectual, it will be necessary that it should have the concurrent assent of the three estates—the Bishop, clergy, and laity." Of these three estates, "neither [*sic*] . . . desires to claim any superiority over or independence of the other. As Bishop of this Diocese, I desire to organise and administer the Diocese in and through the wisdom and authority of the Synod. The Bishop cannot act without the consent of the clergy and laity; the clergy without the consent of laity and Bishop; the laity without the consent of the Bishop and clergy." After referring to the first Lambeth Conference, which was being held in the same month in England, the Bishop continued: "The Church at home is at once national and catholic—the Church in the Colonies is catholic but not national. Catholicity is of the essence of the Church, —its nationality or establishment is an accident. The Church at home is a part and parcel of the British constitution,— in the Colonies it is a voluntary association; as such it deserves to be regarded, and claims to be in no better or worse position than any other religious denomination; and if the Presbyterian, or Wesleyan, or any other religious body are [*sic*] able, without legislative enactment, to organize themselves, I can see no reason why, if after mature consideration such a course is considered to be the most expedient, the Church is not able to do likewise."

The passage which follows is perhaps the most important:

"The first question, then, my brethren, which I should desire to submit for your consideration is whether in your

[1] The address was reported in full in the *Brisbane Courier* of September 5th, 1867.

judgment the time has arrived when it will be desirable for us to enter upon some form of synodical action ; and if this is decided by you in the affirmative, then what form of synodical action you would desire to adopt. Whether it should be by Legislative Enactment or consensual compact. Different forms of synodical action have, as you are aware, been already adopted in several of the Australian Dioceses. It will be for the Conference to decide which, if any, of those forms they desire to adopt. I shall be ready, my brethren, to accept whichever the Conference may desire. Whilst as at present advised I have no hesitation in saying that I think it would be desirable to adopt a form of consensual compact, with an application to the Legislature, if subsequent experience should prove it to be desirable, for some simple enactment which, with due regard to vested interests and specific trusts, may enable the Synod to deal with the temporalities of the Church."

The session on the following day (September 5th)[1] was devoted mainly to the discussion of the motion of Mr. Justice Latwyche—" that, in the opinion of this Conference, the Synod to be hereafter convened shall be founded on the basis of voluntary compact, and not on legislative enactment." The motion, after much discussion, was ultimately carried unanimously. A standing committee was appointed to draw up a draft synodical constitution.

III. The First Synod

The first meeting of the Synod was held from May 6th–8th, 1868, at Brisbane.[2]

In the opening address, the Bishop referred to the decisions of the recent Lambeth Conference resolution which urged, " By the Diocesan Synod, the co-operation of all members of the body is obtained in Church action, and that acceptance of Church rules is secured which, in the absence of other law, usage, or enactment, gives to these rules the force of laws, binding on those who expressly, or by implication, have consented to them." He then proceeded to quote the detailed application of this Lambeth decision and to comment upon it. He gave a list of subjects which he thought might well claim the attention of the Synod ; they included " the sustentation of the clergy and their appointment to their respective cures ; the organization and subdivision of

[1] The *Brisbane Courier*, September 6th.
[2] It was reported in full in the *Brisbane Courier* day by day.

parishes; the consecration of churches and cemeteries; the compilation or selection of a hymnal for general use in the Diocese; the education of the young; the supply of the occasional offices of the Church, such as marriages and burials; Church dues and fees; the adoption of some model trust deed, or the appointment of a Board, who, subject to the control of the General Synod, and to the terms of any specific trust, may stand possessed of lands or moneys, either granted by the Crown or given by individual members, for the use and benefit of the Church; the education of the children of the clergy, and some provisions for those who, through infirmity or age, are no longer able to fulfil the active duties of the ministry." On some of the subjects the Bishop said it would probably be necessary to appoint select committees.

The Synod then proceeded to a consideration of the draft Constitution. As Mr. Justice Latwyche pointed out in a speech on May 8th, with a few slight variations the Constitution was based on that of New Zealand. The importance of the matter in hand, however, led to an adjournment of the Synod for a month, until the members had had sufficient time to consider the provisions of the proposed Synodical Constitution.

IV. The Diocesan Constitution

The Synod re-met after adjournment on June 8th, 1868. The Bill, after considerable discussion on certain points, especially on the so-called "Fundamental" clauses, was finally passed with only slight amendments. Its most important provisions were the following:

Clauses 3–8 dealt with the Fundamental Provisions. The first two of these (Clauses 3 and 4) differed only in details from the corresponding provisions in New Zealand, on which the Bill was modelled. "This Branch of the United Church of England and Ireland in the Diocese of Brisbane doth hold and maintain the doctrine and sacraments of Christ, as the Lord hath commanded, and as the said United Church of England and Ireland doth receive the same together with the Holy Scriptures and the book known as the Book of Common Prayer, and administration of the sacraments, and other rites and ceremonies of the Church, according to the use of the Church of England, together with the Psalter or Psalms of David, pointed as they are to be sung and said in churches, and the form or manner of making, ordaining and

consecrating Bishops, priests and deacons, and also—The Articles agreed upon by the archbishops and bishops of both Provinces and the whole clergy in the convocation holden at London in the year 1562. And the Synod hereinafter constituted for the government of this branch of the said Church shall also hold and maintain the said doctrine and sacraments of Christ, and all and every of the said Scriptures, books, and articles hereinbefore enumerated" (Clause 3). "Provided always, that nothing herein contained shall prevent the said Synod from accepting such alteration of the above-named matters, books, and formularies as may from time to time be adopted by the said United Church of England and Ireland" (Clause 4). Clause 7 laid down the method of alteration "of any of the fundamental provisions of these presents, or any part thereof." A committee is to be appointed to enquire into the necessary changes and its report is to be accepted by the Bishop together with at least three-quarters of the clergy and three-quarters of the lay-representatives present at two successive Synods.

Clauses 9–27 are "non-fundamental." The Synod is to be held at least once every year (Clause 9), the present meeting being taken as the first session of the Synod (Clause 10). The Synod is to determine the mode of election of representatives.[1] Clause 14 gives the Synod the power of making provisions concerning the rights of patronage; Clause 15 enables it to deal with Church property and trusts. Clause 20 is important. "In the avoidance of the See, saving the rights of the Crown, if any exist, the nomination of a Bishop shall proceed from the clergy, and shall be submitted to the Synod for approval, *provided always that it shall be lawful for the Synod to delegate the nomination of a Bishop to the Archbishop of Canterbury or the Archbishop of York, or the Bishop of London.*" The words in italics were an amendment added at the Synod to the draft Constitution.

V. The Diocesan Synod a Body Corporate

I reproduce here a copy of some Letters Patent, issued on November 2nd, 1870, as illustrating the form which such letters took at that date. The importance of those Letters Patent issued to create sees and appoint bishops must not be allowed to obscure their use for other purposes.

[1] For this purpose the same Synod drew up and ratified an "Election Constitution."

" Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, etc. etc.

" To the Right Reverend Edward Wyndham Tufnell, D.D., Charles Cozen and Thomas Henry Paige, all of Brisbane, in the Colony of Queensland :

" Greeting,

" Whereas by the Religious Educational and Charitable Institutions Act of 1861, it was enacted that it should be lawful for the Governor with the advice of the Executive Council from time to time to issue Letters Patent under the seal of the Colony, and therein to declare that any person or persons and their successors for ever holding any religious or secular office or preferment or exercising any religious or secular functions to which he or they should have been called or appointed in accordance with the rights, laws, rules and usages of the community or institution to which each person or persons should belong should be a body corporate by such name and style as might in and by the said Letters Patent be given to such corporation. And whereas it hath been represented to us that you, the Right Reverend Edward Wyndham Tufnell, D.D., Charles Coxen and Thomas Henry Paige respectively hold and exercise the office of President, Chairman of Committees and Treasurer of the Synod of the branch of the United Church of England and Ireland in the Diocese of Brisbane in the colony of Queensland, and that you have been appointed to such offices respectively according to the rights and usages of the said Synod and whereas it hath been further represented to us that you are desirous of being incorporated and designated by the style of the Corporation of the Synod of the Diocese of Brisbane under the provisions of the said Act, and have complied with the provisions thereof entitling you in that behalf. Now know you that we in pursuance of the power and authority vested in us by the said Act, and by and with the advice of the Executive Council of the said colony, do by these Letters Patent, declare that you, the said Right Reverend Edward Wyndham Tufnell, D.D., Charles Coxen and Thomas Henry Paige and your successors for ever shall be a body corporate by the name and style of *The Corporation of the Synod of the Diocese of Brisbane*.

" In testimony whereof we have caused these our Letters Patent to be sealed with the seal of the said colony.

"Witness our trusty and well-beloved Samuel Wensley Blackall, Esquire, Governor and Commander-in-chief of our Colony of Queensland and its Dependencies at Government House, Brisbane in Queensland aforesaid on the second of November in the year of our Lord, one thousand eight hundred and seventy, and in the thirty fourth year of our reign.

(L. S.) "Sam W. Blackall, *Governor.*

"By His Excellency's Command.

"A. H. Palmer."

VI. New Dioceses

The number of Clergy at the May Synod in 1868, i.e. from the whole of Queensland, was only twelve (excluding the Bishop).[1] As the Colony increased the Church expanded too, though not as rapidly as had been hoped. In Dr. Tufnell's opening address to the Synod of August 21st, 1872, he said: "We shall be disappointed to find that whereas 15 clergymen were cited to attend our first Synod which was held in the year 1868, only 17 have been invited to take a part in the proceedings of our present session, whilst 5 clergymen who once held my licence to the cure of souls have for various reasons ceased to officiate as such, although still continuing to reside within the limits of the diocese."[2] There had been serious defections; and the Bishop went on to say how necessary it was to direct their attention "to the best means of making provisions for a considerable increase in the number of the clergy and I have" (he said) "no hesitation in saying that if it were practicable the most effectual means of attaining this desirable end would be one which I should desire to promote by every means within my power,—viz. the subdivision of the Diocese."

Accordingly, before long the Diocese was subdivided. The Diocese of North Queensland was created in 1878, that of Rockhampton in 1892. We cannot treat here of their respective diocesan constitutions in full, that of Rockhampton follows especially closely that of Brisbane; in the case of North Queensland[3] there is a long list of the matters on which the Diocesan Synod has powers to legislate.

[1] The number of laity was 22.

[2] Reported—The *Brisbane Courier* of that date.

[3] The Constitution, in an amended form, may be seen in H. L. Clarke: *Constitutional Church Government*, pp. 145–150.

VII. Province of Queensland

The First Session of the Provincial Synod was held in 1906. By that time, there were five dioceses ready to form the Province, the two further dioceses of New Guinea and Carpentaria having been created in 1898 and 1900 respectively. New Guinea, by Determination III of the General Synod session of 1900,[1] had been included in the territorial limits of the Church of England in Australia and Tasmania, and at the 1905 Session a determination was passed whereby the Diocese was included within the Province of Queensland.[2]

A draft Provincial Constitution was drawn up and agreed upon at a Conference held at Brisbane in 1904. The Province was declared on August 28th, 1905, and New Guinea added, as we have just seen, in the ensuing October. Accordingly the first Provincial Synod had been fully prepared for when it entered its first Session on October 23rd, 1906.[3]

The most notable feature of the Constitution is a list of subjects on which the Synod has the power of legislation. Such a list occurs in neither of the two earlier Provincial Constitutions (New South Wales and Victoria); in fact, in these cases, the decisions of the Provincial Synod are subject to ratification by their dioceses. It was, therefore, a new departure when Queensland gave to its Provincial Synod real powers of legislation. The list of subjects referred to is to be found in Clause 2; Clause 15, however, is the really important one: "All Canons shall be promulgated by the President of Synod, and shall, when so promulgated, be binding thereafter upon all the Dioceses of the Province. Provided always that nothing therein contained shall be or be construed in any measure contrary to or inconsistent with the ancient Canons whereby the Diocesan Synods had the free administration of their own internal affairs."

The other clauses of the Constitution are of less importance. By Clause 7, the Metropolitan Bishop is the Bishop of the Diocese of the capital city of Queensland, i.e. Brisbane. By Clause 6, "the Provincial Synod shall meet not less frequently than once in every three years, at Brisbane, Townsville and Rockhampton in rotation." Clause 18 provided for the admission of further dioceses to the Province.

[1] Cp. *infra*, Ch. XIII on the General Synod.
[2] *General Synod Report*, 1905.
[3] The *Official Report* was published at Brisbane (R. S. Hews & Co.) in the same year. It contains also the Standing Orders of the Provincial Synod, and three Canons of that Synod.

CHAPTER XI

WESTERN AUSTRALIA

I. The Relation to South Australia

AS we have seen, by the creation of the four new dioceses out of the original Diocese of Australia in 1847, South Australia and Western Australia had each been granted complete autonomy in relation to the other two. But, though there were three different Colonies, the population was by no means equally divided amongst them. The Easternmost Colony, which, it must be remembered, extended at that time from Torres Strait to Bass Straits, was much the most populous. Hence, it was not without reason that this Colony alone was divided between three Sees ; and the whole of the other two Colonies, South Australia and Western Australia, were constituted into one vast Diocese. The Church in Western Australia was consequently, in early times, under the jurisdiction of the Bishop of Adelaide.

It was in the year 1857 that the See of Perth was severed from the Diocese of Adelaide by Letters Patent. It was natural that the new Diocese should organize itself by the method that had been working so effectively in the mother Diocese. Consequently, we hear very little talk at all in Western Australia of any question of appeal to the Legislature, except in so far as it was necessary for the holding of property. Consensual Compact was adopted, and has continued to be the basis of Church Government in that Colony up to the present day.

II. The Constitution of the Perth Synod

It was not till 1872 that Synodical government in the Diocese began. On August 23rd of that year was passed "The Constitutional Act of the Diocesan Synod of the Branch of the Church of England in Western Australia";[1] it was based on a provisional Constitution drawn up at a Conference at the Bishop's House, held on July 13th, 1871.

[1] It may be found in *Code of Statutes of Diocese of Perth*, Perth, 1907.

The preamble contains a statement of faith, which is the basis of the West Australian Church. "This Branch of the Church of England in Western Australia," it reads, "doth hold and maintain the Doctrine and Sacraments of Christ, as the Lord hath commanded in His Holy Word, and as the said Church of England hath received and explained the same in the Book of Common Prayer, in the form and manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons, and in the XXXIX Articles of Religion. Provided that nothing herein contained shall prevent the Synod from accepting any such alteration of the formularies and Version of the Bible, as may from time to time be adopted by the Church of England with the consent of the Crown and Convocation."

The Constitution proper opens with a statement that the Synod is to consist of the Bishop, the licensed Clergy of the Diocese, and two elected Lay Synodsmen to each clergyman. All members of the Church of England of the age of twenty-one shall, on signing a declaration of faith, be capable of voting for the Synodsmen (Section 3); the Synodsmen themselves must be communicant members of the Church and shall hold office for three years (Sections 4, 6). Every year there shall be a general meeting of the Synod (Section 8). Ordinarily, the clergy and laity shall vote together (Section 10) unless two of the clergy or four of the laity present shall require voting by orders (Section 11). The assent of the Bishop shall be necessary for the adoption of a resolution when the voting had been taken by orders (Section 12). Should, however, the Bishop dissent from any resolution carried by a majority of both orders (clergy and laity), all action is to be suspended till the next meeting of the Synod; and should the Act then be confirmed by two-thirds of the Clergy and two-thirds of the laity then present, and the Bishop shall dissent, the matter shall be referred to the Provincial Synod (if it has been constituted) and the decision of that Synod shall be final (Section 13). Until the constitution of a "Provincial Synod for the Australian dioceses,"[1] all appeals shall be to the Metropolitan (Section 15).

III. The Creation of the Diocese of Bunbury

The division of the Diocese of Western Australia to which the Constitution of its Synod at least looked forward, did not

[1] A "Province" of Australia was, of course, never constituted.

enter the sphere of practical politics until the last decade of the nineteenth century. It was the discovery of gold in 1891 which provided a new stimulus for the development of the interior of the Colony; and from that time forward it was sufficiently manifest that West Australia was to enter on a career of expansion similar to that of the remaining States. The first time that the question of the division of the Diocese was raised by high authority was in Bishop Riley's charge to the Synod, dated December 5th, 1897, Here he asserted that it was essential either that the Diocese should be divided or that an assistant Bishop should be appointed. In the succeeding Synods, the subject was given a prominent place in the Bishop's charges.

In 1899 a proposal—in many ways not unreasonable—was put forward by Dr. Harmer, the Bishop of Adelaide. He suggested that a Province should be constituted, consisting of the five Dioceses of Melbourne, Adelaide, Ballarat, Tasmania, and Perth. Adelaide and Perth, which had been formerly in the same Diocese, should now be in the same Province. But the Bishop of Perth preferred to wait till a Province could be formed, the limits of which were coterminous with those of the State. "I would rather," he said, "wait for a time, which will not be long in coming, when Western Australia becomes so populous that three dioceses can be formed where only one now exists."[1] And Bishop Riley's view won the day.

The first thing to do was to collect funds. In 1900 a definite beginning was made. A sum of £2000 was soon raised in the Diocese; in 1903 this was augmented by a gift of £3500 from Mr. Walter Padbury, a generous layman of the Diocese; and as the result of an appeal three Home Societies each voted £1000. In this way the required minimum for the creation of the Diocese was obtained.

From the outset, the four dioceses into which the West Australian Church is divided to-day were kept in view as the goal; the provisional boundaries fixed at the beginning of the century have been almost exactly adhered to. In 1903, therefore, Bunbury was created a separate Diocese with its present-day boundaries. The Perth Synod passed "The New Diocese Statute" in 1903, and the Diocese was thereby constituted. The full text is given in the *Code of Statutes of Perth* (1914), to which reference has already been

[1] Quoted *Official Report of 1st Session of Provincial Synod of Western Australia*, 1914. Perth, 1914.

made. It provided for the erection of a " Diocesan Synod," which was to " have and exercise in regard to the said Diocese all authority, rights, and privileges which appertain to the Synod of the Diocese of Perth." (Section 9.)

IV. The See of North-West Australia

Section 14 of the New Diocese Statute just referred to provided that, until the creation of the Diocese of North-West Australia, the Bishop of Bunbury should have " under his Episcopal charge " " so much of the northern part of West Australia as is comprised within the magisterial districts of Ashburton, Broome, Gasgoyne, Kimberley East, Kimberley West, Kimberley North-East, Pilbarra, and Roebourne." The Synod of Perth could empower the Synod of Bunbury to make resolutions and regulations for the administration of these magisterial districts ; and the Bishop could summon to his first Synod clerical and lay representatives from them. Eight per cent of the Perth Sustenation Fund was to be paid to the Bishop of Bunbury for the stipends of clergy in the area.

Clearly the arrangement was only temporary. The fact that there were greater prospects of financial support for the proposed Diocese of North-West Australia than for that of Kalgoorlie led the Church in the State to press the claims of that Diocese. A fund was again started which, by 1908, amounted to £2400. In 1907 the previous benefactor of the Western Australian Church, Mr. Walter Padbury, died, leaving some £30,000 for the benefit of the Church ; and the Synod of Perth thereupon requested that the Trustees should be asked to set apart from this bequest a sufficient sum to make up the required total of £10,000. After a contribution of £600 had been received from the Pan-Anglican Offering, and the Home Societies had given a further sum of £3000, the balance of £4000 was granted from the Padbury bequest. Thus the endowment of the See of the North-West became an accomplished fact, and the Synod of Perth, by the Northern Diocese Statute, 1907, established this Diocese.

This Statute, which, it will be noted, was passed two years before the Diocese came into being, is similar to that constituting the Diocese of Bunbury. Special provision, however, was necessary here on account of the small number of clergy working in the Diocese ; it was thought impossible to constitute a Diocesan Synod under those circumstances. Accordingly, Section 5 determined that " the Diocese shall

be organised with a Synod so soon as there shall be at least eight clergymen licensed by the Bishop resident within the Diocese." Even in 1921 there were only six clergy working in the Diocese; hence up till the present day there is no diocesan Synod in North-West Australia. It remains bound, therefore, by the Acts of the Synod of Perth.[1]

V. The Diocese of Kalgoorlie

The establishment of the Kalgoorlie (Goldfields) Diocese remained, then, in abeyance. Up till 1910 less than £300 had been raised for its endowment. But from that year onwards active steps were taken towards bringing this Diocese into being. Its Constitution was even drawn up by the Perth Synod under the title of "The Kalgoorlie Diocese Statute" as early as 1910. A special appeal resulted in £1500 being added by June 1911 to the Endowment Fund, and this increased to £3200 by 1912. The Padbury Bequest was again called upon to the extent of £3000; the S.P.C.K. and Colonial Bishoprics Fund each gave £500; the S.P.G. added £1000; and an English benefactor £500. In 1913, the total sum in hand exceeded the £10,000 required, and the Primate's stipulation that a residence for the Bishop should be provided was also met by the end of that year.[2] Accordingly, the new Bishop was duly elected, and consecrated in 1914.

VI. The Province of Western Australia

The General Synod of 1881 determined that at least three dioceses were necessary for the formation of a Province.[3] It was therefore natural that a Province would have been constituted on the creation of the Diocese of North-West Australia in 1909. For this goal, Dr. Riley, the Bishop of Perth, worked with all his might. The Statutes of North-West Australia prepared the way as far as it was possible. "So soon as three Dioceses shall have been formed in Western Australia, then the Synod of each Diocese shall submit proposals to the Primate for the formation of an Ecclesiastical Province of which the Bishop of Perth for the time being shall be Metropolitan" (Section 14).

On October 6th, 1911, the Synod of Perth passed a further resolution, urging the formation of a Province. To this resolution was attached a proposed Constitution for the

[1] Northern Diocese Statute, 1907, Section 11.

[2] Cp. *Proceedings of First Session of Provincial Synod of* 1914. *Official Report*, p. 6.

[3] Cp. *General Synod Report*, 1881, pp. 79–81.

Province.[1] This Constitution of the proposed Province of Western Australia was duly accepted by the Bishop of the North-West, by the Bishop and Synod of Bunbury, and by the Bishop and Synod of Perth ; and it was imagined that the Province would come into being without further delay.

But the creation of the Province was not such an easy matter as might appear. The Primate raised objections which blocked further proceedings. He decided that three dioceses, only two of which possessed Diocesan Synods, were inadequate material for the formation of a Province, and consequently withheld his consent. To quote here his words on the subject addressed to the General Synod of 1916[2] he stated : " One most difficult matter in which I had reluctantly to act counter to strong local desires was connected with the creation of the new province of West Australia. According to Determination I, of Session 1881, it is provided that ' when the Bishop, Clergy, and Laity of three or more Dioceses shall desire to be formed into a Province, such desire being evidenced by Resolutions duly passed by the Synod of the several Dioceses, they shall submit to the Primate proposals and the Primate shall forthwith bring such proposals before the Bishops of Australia and Tasmania.' I was requested by the Bishops of Perth, Bunbury, and North-West Australia to bring a proposal for the formation of a Province of West Australia before the Bishops. I had to point out that it was impossible for me to accede to that request because the preliminaries required by the Determination had not been fulfilled—the Diocese of North-West Australia being without a Synod. My action was challenged, and a voluminous correspondence ensued, but fortified by the best legal opinion that I could obtain, I persisted in my refusal, being convinced that I had no right to depart from the express provisions of a Determination of the General Synod, even at the cost of differing from local opinion."

With the creation of the Diocese of Kalgoorlie, in 1913, these obstacles, of course, were removed ; and in the next year West Australia was duly constituted a Province, consisting of the Dioceses of Perth, Bunbury, and Kalgoorlie.[3]

[1] The Resolution, in amended form, may be found in *Supplement to Code of Statutes of Perth*, 1914. [2] Cp. *Official Report*, p. 9.

[3] The Provincial Constitution of Western Australia, in its amended form, is given in the *Supplement to the Code of Statutes of Perth*, 1914.

VII. The Position of North-West Australia

North-West Australia remained, and still remains, without a Synod, on account of the small number of clergy which it possesses.

It was clear that the Diocese should have some kind of relationship to the Provincial Synod. Accordingly, on September 8th, 1916, the following resolution was sent to the Primate as President of the General Synod[1] " That the Most Reverend the Metropolitan be respectfully requested to enter into communication with the Lord Bishop of North-West Australia with regard to the inclusion of that Diocese in the Province, and with the consent of the Bishop of the North-West, to present a petition on behalf of Provincial Synod to General Synod praying that the Diocese of North-West Australia be added to and included in the Province of Western Australia."[2] But the resolution was without effect.

In 1921, a petition, dated August 30, on the same subject was sent to the General Synod.[3] This time, the petition was successful ; and General Synod passed on October 10th, 1921, the following resolution : " Whereas the Metropolitan of the Province of Western Australia and the Bishop of North-West Australia have presented to this Synod a Petition praying that the Diocese of North-West Australia may be added to and included in the Province of Western Australia formed under Determination I, General Synod, Session 1881. Now we the Bishops and Clerical and Lay Representatives of the said Church in the Dioceses of Australia and Tasmania do hereby sanction and direct that the boundaries of the said Province shall be extended so as to include the Diocese of North-West Australia which shall hereupon be included within the Province of Western Australia and shall be in all respects in the same position in the said Province as if it had been originally included therein under the provisions of the 4th and 5th Rules of Determination I, General Synod, Session 1881."[4]

[1] In the same letter, resolutions were also sent on the following subjects—(i) The Legal Nexus ; (ii) The Reform of General Synod ; (iii) Entertainments on Good Friday ; (iv) Reunion.

[2] *Official Report of General Synod*, 1916, p. 112.

[3] The petition is given as Appendix 8 to the *General Synod Report* of that year, p. 119.

[4] *General Synod Report*, Appendix 19, p. 188.

THE COLONIAL CLERGY ACTS, 1874

EXCURSUS TO CHAPER XI

I. The Act 37 & 38 (Vict., Cap. 77)

Though not strictly relevant to our subject, some reference may be made here to the Colonial Clergy Act of 1874. The purpose of the Act was to regulate the ministrations in England of clergy who had been ordained by colonial bishops. Its chief provisions were the following :—

" (i) That no such person shall officiate in England without written permission from the Archbishop of Canterbury (or of York, as the case may be), and after making and subscribing a formal declaration.

" (ii) That no such person (having obtained written permission from the Archbishop of the Province in which he proposes to officiate) shall officiate as Priest or Deacon in any Church or Chapel without the consent in writing of the Bishop of the Diocese.

" (iii) That after acting as a Curate or holding Ecclesiastical preferment for a period or periods exceeding in the aggregate two years, he may apply to the Archbishop ' to issue to him a licence.' "

Delinquents were subject to severe penalties. " For every offence, he shall forfeit and pay the sum of £10. The incumbent of such church or chapel shall pay the like penalty." The Act still remains in force.

II. Objections to the Act

It is fairly clear that the reason why the Act was passed was the existence of a feeling in the Church at home that many who were of insufficient intellectual attainments to secure ordination from the Bishops in England might satisfy the less rigid demands of the Colonial Episcopate. After ordination, it would be possible, unless further legislation were introduced, for such clergy to return to England ; and there they would receive the same status and privileges as those who had been ordained in England. Accordingly there appeared to be ample justification for the Act at the time when it was passed.

Since that date, considerable changes have taken place,

the intellectual standard demanded by the colonial bishops has considerably increased, while that demanded at home has probably declined and certainly narrowed. The foundation of the *Australian College of Theology* in 1891 has done much to foster a higher standard of scholarship among the Australian clergy; and the Australian episcopate, though not demanding that every candidate for orders shall pass the examiners of that institution, has raised its demands at least in the direction of that ideal. The consequence has been that among the Colonial clergy there has been felt a widespread dissatisfaction with the continuance of the restrictions of the Colonial Clergy Act. Thus the General Synod of Australia in 1916[1] passed the resolution: "That this Synod desires to bring under the notice of the Prime Minister of the Commonwealth the legal disability imposed upon the Australian Clergy of the Church of England by the Colonial Clergy Act (37 & 38 Vict., c. 77), and urges him to take steps to have the disability removed"; and the Australian Prime Minister forwarded to the English Prime Minister a request that the Act should be repealed.

The resolution of the Lambeth Conference of 1920, though less committal, is also significant.[2] "The Consultative Body (i.e. of the Lambeth Conference) is asked to take into its consideration the provisions of the Colonial Clergy Act with a view to their modification."

The modification, however, is not quite such an easy matter as it might appear, for the growth of a native clergy in certain parts of the Anglican Communion naturally makes highly desirable some such legislation as that provided for in the Colonial Clergy Act; and the amendment of the present Act in such a way as to exclude expressly only the native clergy would hardly be possible without causing unnecessary offence. The alleged disabilities hardly exist in practice, and at a time when the relations between the English and Colonial Episcopates are working in an unsurpassed harmony it seems inopportune to clamour for the removal of what might in the future prove to be a valuable safeguard.

[1] *Official Report*, p. 46.

[2] *Ibid.*, Resolution 45 (p. 39).

CHAPTER XII

CHURCH PROPERTY AND STATE AID

I. Early Times

IN the early history of Australia practically all the temporalities of the Colony were vested in the Governor. And, if this was the case in general, still more so was it in that of the Church, which, as we have seen, was directly under the Governor's thumb. The Home Government was quite clear on the point. By virtue of an Order in Council, dated December 6th, 1786, provision was made for the building of churches, and the granting of lands for Church purposes; and confirmation of this order was given by the instructions dated April 25th, 1787, to Phillip, before he sailed. "It is further," so these instructions state, "our royal will and pleasure that you do by all proper methods enforce a due observance of religion and good order among the inhabitants of the new settlement, and that you do take such steps for the due celebration of publick worship as circumstances will permit."[1] And, elsewhere, definite powers of granting land "to any person or persons upon such terms and under such moderate quit-rents, services, and acknowledgments to be thereupon reserved unto us according to such instructions as shall be given to you under our sign manual" were conferred upon him.[2]

Before long, more definite instructions were issued, for in that year he was informed: "It is Our further Will and Pleasure that a particular spot in or as near each town as possible be set apart for the building of a church, and 400 acres adjacent thereto allotted for the maintenance of a minister and 200 for a schoolmaster."[3]

It would appear that as soon as the Governor had received these instructions, he made the necessary grants of land, which was hardly a task of great difficulty. But, as no

[1] *Historical Records of New South Wales*, Vol. I, Part II, p. 90.
[2] *Ibid.*, p. 66. (In Phillip's Commission, given here in full, pp. 61–67.)
[3] *Ibid*, p., 259.

provision was made for their cultivation, the lands, needless to say, were of no immediate use. Writing home in 1792, Johnson wrote, " Upon the arrival of the *Juliana*, in June, 1790, his Excellency told me that 400 acres were to be measured out as Church ground. This was measured out at that time, but, to this day, he has not been able to let me have any help to cultivate it, neither has there been so much as a tree fallen upon it. I cannot suppose the Government meant for me to use axe or spade myself, but this I have done day by day, otherwise, bad as my situation is, it would have been still worse. I mention this circumstance, being aware that the sound of 400 acres will appear great. But what, sir, are 400 or 4000 acres full of large green trees, unless some convicts be allowed to cultivate it ?

" I did not come here as an overseer, or as a farmer, I have other things more, much more important to attend to."[1]

Still less was any provision made for the erection of churches on the lands so granted. In the same letter he wrote, " I have to perform Divine Service at three different places, viz. at Sydney, Parramatta, and at a Settlement about three miles to the westward of Parramatta, and at never a one of these places is there, to this day, any place of worship erected, nor so much as talked of. The last time I preached at Sydney was in the open air. On the 11th inst. we could not have service at all because of the rain. Next Sunday, if the weather will permit, we shall assemble in an old boat-house, close by the river side ; the sides and ends quite open. . . . Last spring, there was the foundation of a church laid at Parramatta. Before it was finished, it was converted into a jail, or a lock-up house, and now it is converted into a granary. Have had this place to perform Divine Service in for several Sundays, but now am again turned out, and must again turn field preacher there also." As we have seen, when eventually a church was erected in 1793, it was the Chaplain who had to bear the expenses for it.

II. The First Church Building

Phillip's successor, Governor Hunter, certainly took greater interest in the material welfare of the Church than his predecessor had done. The injunctions about setting apart lands for Church purposes were repeated in his Commission. Indeed, they would appear to have been repeated in all the early Governor's Commissions ; for we find identical

[1] J. Bonwick : *Australia's First Preacher*, pp. 88 f.

words in the instructions issued to Brisbane, dated February 5th, 1821.[1]

Two years before Hunter's appointment, Johnson had written to the Under-Secretary of State (Henry Dundas), urging that more adequate provision be made for the building of churches.[2] His appeal was unavailing, and the country was much too excited about the French War to take any cognizance of a letter from a chaplain of a far-distant criminal colony; and what is more, Major Grose had misrepresented Johnson, against whom he had great personal animosity, to the Home Government, a fact which alone would have nullified any of the chaplain's chances of hearing. Johnson, therefore, determined to appeal to the new Governor, and addressed to him a similar letter to that to the Under-Secretary of State just mentioned.[3]

Hunter saw that something must be done. In the same year, he wrote to the Secretary of State, the Duke of Portland, that "this Colony has now been a long time established without a proper building for the clergy to perform divine service in, which is a disgrace to us as a Colony."[4] Wilberforce, too, supported the appeal at home.[5] The result was a dispatch to Hunter from Whitehall, dated 31st January, 1797, which contained these words—"If you are satisfied that Mr. Johnson's account of the expenses he has incurred in the erection of a temporary place of worship is correct, I see no objection to your disbursing him the amount by a bill on the Lords Commissioners of the Treasury."[6]

The principles laid down in the original Order in Council of 1786 were thus carried into practice, and they continued to determine the building of churches in the Colony for over twenty years.

III. The Corporation of the Trustees of Church and School Lands

The Commission to Brisbane[7] of February 5th, 1821, followed the same lines as those of his predecessors. He was

[1] *Historical Records of Australia*, Vol. X, Series 1, p. 602.

[2] In a letter of September 3rd, 1793. *Historical Records of New South Wales*, Vol. II, pp. 64 f. Given also in an Appendix (Document Q).

[3] Dated, December 10th, 1795. *Historical Records of New South Wales*, Vol. II, pp. 341 f. It is given also in J. Bonwick, *op. cit.*, pp. 220 f.

[4] *Historical Records of New South Wales*, Vol. III, p. 350.

[5] Bonwick, *op. cit.*, pp. 222 f., which gives a letter of Wilberforce to Dundas.

[6] *Historical Records of New South Wales*, Vol. III, p. 192.

[7] *Historical Records of Australia*, Vol. X, Series 1, pp. 596–603.

empowered to provide for the reservation of Church Lands and to make the usual grant of 400 acres for the purposes of the Maintenance of a Minister (Section 18). Four years later, it was proposed[1] to erect a Church Trust, invested with the necessary powers and legal qualifications for the purposes of the ownership of Church Lands. This body was to be created to make " an adequate provision for the support of the Clergy of the Established Church of England throughout the Colony and Church " (Section 18). The Corporation was to consist of the Governor as President, the Lieutenant-Governor, the Chief Justice, and the members of the Legislative Council for the time being, the Archdeacon of New South Wales, the Colonial Secretary, the Attorney- and Solicitor-General (Section 18). At an early opportunity, a charter of incorporation is to be granted to these persons, " investing them with power to manage the Lands to be appropriated to the maintenance of the Church and the Education of Youth in New South Wales " (Section 19). Section 20 is somewhat astounding by reason of the liberality of the grants to be invested in the Corporation ; it must be quoted in full : " It is proposed to invest the Corporation with an estate in each County into which the Colony is to be divided. That estate will, as nearly as may be, lie in one continuous and unbroken tract ; when this shall prove impracticable without serious injury or inconvenience to private settlers in the County, the Clergy, and the School Estate may be alloted in seperate [*sic*] tracts, bearing, however, in mind the necessity of breaking this property into the smallest possible number of divisions. These lands, to be called the Clergy and School Estates, will comprize [*sic*] one-seventh part in extent and value of all lands in each County. It will, therefore, be a peculiar and important part of the duty of the Commissioners of Survey and Valuation to mark out in each County the Clergy and School Estate. The lands thus to be set apart must be of an average quality and value in reference to the general value of the lands comprised in the County in which each particular allotment may be made ; and they must select such situations as may afford a reasonable and equal share of all those natural advantages of water carriage, or other internal communication, which may be possessed by the lands in general throughout the County ; you will accordingly issue very particular

[1] In a letter of Bathurst to Brisbane, dated January 1st, 1825. *Historical Records of Australia*, Vol. XI, pp. 434–454.

directions to the Commissioners for their guidance in making these allotments, and you will require them to make a special and distinct report in reference to the survey and valuation of each County, pointing out with all possible precission [*sic*] the particular tracts appropriated for the Clergy and School Estates of the County."

It was not, however, till March 9th, 1826, that the letters Patent were actually issued, constituting the Corporation of the Trustees of Church and School Lands.[1] They followed substantially the proposals made to Brisbane in 1821. The Governor was to be President as originally proposed, but the Archdeacon was to be *ex officio* the Vice-President. The Corporation was also to number among its members the nine Senior Chaplains.[2] It was vested with the power of appropriating lands up to the extent of 20 acres for the purpose of the erection of churches.[3]

For the purposes of the maintenance of the Church, the lands already set apart were to be held administered by the Corporation.[4] Only the Church of England was provided for, since, as we have seen,[5] there was a definite movement on foot at this time to give official recognition to the Church of England alone. Provision was also made for the payment of stipends to clergy and officials and for the future erection of a bishopric.[6]

It may be pointed out here, that in spite of the creation of this new Trust, the Archdeacon still remained, in the terms of his Letters Patent, a "body corporate." Hence it was possible for those who desired to bequeath lands to the Church to have a greater security for the permanent fulfilment of their wishes than would have been the case if the property were vested in the Trustees.

IV. The Dissolution of the Corporation

The Corporation was not destined to live long. In 1831, General Sir Richard Bourke, a Peninsular veteran,[7] was appointed Governor. He saw that some change was essential. For it was quite impossible with the rapid development of the Colony to continue the lavish grants which the Charter of the Trustees ordered. And, furthermore,

[1] *Historical Records of Australia*, Vol. XII, Series 1, pp. 125 f. "Additional Instructions to Governor Darling." The text of the Letters Patent, apart from the slight alterations there referred to, is to be found in Vol. XI, pp. 444–454. [2] *Ibid.*, Vol. XI, p. 445.
[3] *Ibid.*, p. 453. [4] *Ibid.*, p. 452. [5] *Supra*, p. 33.
[6] *Ibid.*, p. 451.
[7] He was a relative of Edmund Burke.

it was clear that some provision should be made for other denominations than the Church of England; for they were completely outside the scope of the Trustees' Letters Patent. Bourke's demand for full religious equality[1] had the support of the Home authorities. Accordingly, steps were soon taken to bring about the dissolution of the Corporation. An Order in Council was issued on February 4th, 1833, whereby His Majesty "did dissolve and put an end to the said Corporation."[2] In the same year, an Act was passed by the Colonial Parliament to carry the dissolution into effect.[3] All property and funds in the possession of the Trustees were now vested in the Crown. A Board, of which Broughton was a member, was appointed on August 20th of the same year, to adjust all claims of and against the said Corporation.[4] Gradually the property was disposed of. The process appears to have taken a considerable time, for as late as December 7th, 1841, a notice occurred in *The Sydney Gazette* and *New South Wales Advertiser*, announcing that certain estates which had originally belonged to the Corporation would be put up for auction.

V. Sir Richard Bourke's Church Act, 1836

An Act,[5] which is generally known as "Sir Richard Bourke's Church Act" provided for the payment from the revenues of the Colony of a sum to be divided annually between four religious bodies.[6] It was to be applied to the purposes for the erection of Churches, Chapels, and Ministers' dwellings, and towards the payment of stipends. Grants of Crown Lands, generally two acres in extent, were also to be made to the Church of England and the other religious bodies. A further Act, dealing with the properties of the Church of England, was passed in the next year (1837).[7]

[1] Bourke's views are clearly set forth in a letter written at a later date (September 30th, 1833) to Stanley. The letter, which has been referred to above (p. 62), is given as a Document G.

[2] *Privy Council Register*, William IV, No. 214 (p. 17). This Order in Council is given as a Document R. [3] 5 William IV, No. 11.

[4] *Sydney Gazette and New South Wales Advertiser*, Tuesday, August 29th, 1833.

[5] The Act is 7 William IV, No. 3. It is entitled "An Act to promote the Building of churches and chapels and to provide for the maintenance of Ministers of Religion in New South Wales." Cp. James Macarthur: *New South Wales, Its Present State and Future Prospects* (London, 1837, D. Walther, publisher), pp. 233–248.

[6] The Church of England; the Church of Rome; the Presbyterians; and the Wesleyans.

[7] This Act is 8 William IV, No. 5. Entitled "An Act to regulate the temporal affairs of churches and chapels of the United Church of England and Ireland in New South Wales."

VI. The Colonial Bishoprics Fund

It was clear that the grant made by the Legislature would be quite inadequate to meet the needs of the Church. External assistance was absolutely essential. Already the Church at home had privately—notably through the S.P.C.K. and S.P.G.—subscribed large sums for the work of the Church in Australia. A further source of the necessary revenue was the newly-established "Colonial Bishoprics Fund," 1841, which appears to have owed its creation to a letter of Bishop Blomfield of London, to the Archbishop of Canterbury on April 24th, 1840. To this fund the S.P.C.K. and the S.P.G. gave £10,000 and £7,500 at the time of its inception; and the fact that amongst its foremost advocates was Mr. W. E. Gladstone assured it of wide support. This fund was a constant source of revenue for the Australian Church.[1]

VII. Abolition of State Aid

From this date (1841) onwards the policy of the Government tended definitely in the direction of the abolition of all State Aid to the Church. Naturally the dates at which such support ceased were different in the different Colonies which had been created in the forty years of the middle of the century. Thus, in New South Wales, it was in 1862; in Tasmania, in 1869; and in Victoria, in 1871; it is interesting to note, that in Victoria, where the connection between Church and State was closest, the financial support continued to the latest date.

But before this abolition was brought about, there is several years' history to be interpolated. More than once, the proportionate division of the sums in the dioceses was changed. For a long time the 1841 census was taken as the basis, because it seemed more representative. It was proposed to make this last representation permanent, since continual readjustment would appear to open the door to proselytism, with its attendant dangers. Thus, one contemporary[2] wrote: "Such efforts (i.e. of propagating one's own form of faith) would be ascribed, however unjustly, to other motives than the disinterested desire for the propagation of truth or of supposed truth, and a spirit of competition and rivalry would be excited, which every

[1] Between 1841 and 1890 inclusive, the Council received a total sum of £991,388, and was instrumental in providing for 67 new Dioceses.

[2] Quoted Sweetman: *Australian Constitutional Development*, p. 376.

devout member of each of these Churches would earnestly deprecate."

The New South Wales Act, "An Act to provide for the Abolition of State Aid to Religion," was finally passed in 1862, though only by a majority of two votes in a House of sixteen members.[1] Section 2, the central provision, asserted that "no stipend or allowance whatever shall be paid out of public moneys after the passing of this Act to any minister of religion not then in receipt of such allowance." That the measure was regarded with grave apprehension by those interested in the welfare of religion was only natural. Mr. Justice Therry, in the book often referred to, regarded the measure as nothing less than a betrayal of trust towards those who had hitherto helped to build up the Church in the belief that this assistance would be indefinitely continued. It is very tempting to quote Therry at great length; but a few passages must suffice, to give the views of this prominent judge on the subject. "It is not an easy matter to name a civilised community less fitted for the adoption of the 'voluntary principle' than that of New South Wales. It is quite compatible with the friendly disposition the author entertains towards the people of New South Wales to abstain from the language of adulation, in giving them credit for virtues to which they may assert but a doubtful claim. It would be an untenable assertion to predicate of them that, as a people, they are so deeply imbued with the religious element as to favour the presumption that suitable support for the clergy will be supplied from voluntary contribution.

"Unlike the emigrants who formed the American Colonies, and who left their native land to plant, on a foreign shore, a faith they believed to be pure and true, the colonists of New South Wales are composed of very different materials. . . . Many have emigrated for the sole purpose of profit in sheep-farming, the pursuit of gold, and other objects of material prosperity; and they, as a class, certainly have not manifested a very zealous interest in the advancement of religion. In the hands of these two classes, forming a considerable section of the whole population, lies much of the wealth of the colonists; and, unless some new-born zeal arises amongst them, there is much reason to apprehend that the ministers of religion, on the 'voluntary principle,' will find that they, in New South Wales, who serve the altar

[1] It is 26 Vic., No. 19, of the New South Wales Statutes.

cannot live by the altar."[1] "The 'voluntary principle' can only prosper where it is sustained and cherished by the willing hearts of a whole people; but to introduce it into a community where a minority will give freely, and a majority niggardly, or not give at all, is alike inefficacious, impolitic, and unjust. . . . The repeal, it is believed, is opposed to the wishes of the majority of the people."[2] He urges further, that the other religious bodies had still more to lose than the Church of England. "In proposing to withdraw pecuniary aid from religion, the merit of dealing with all denominations equally is claimed for the recent measure. This alleged equality is, however, but a delusion—as is obvious from the fact that the Church of England is handsomely endowed with Glebe and other lands—its Head assured of an independent income of £2000 a year, secured to him and his successors *in perpetuum* on Glebe property."[3]

The corresponding Tasmanian Act entitled "An Act to provide for the Commutation of the sum of £15,000 a year reserved by 'the Constitutional Act for Public Worship in Tasmania, 1862,'"[4] was passed in 1868, and received the Royal Assent in the following year. The Church in the Colony, however, was not left absolutely desolate. Immediately after the passing of this Act, the Attorney-General, Mr. W. L. Dobson, brought in another Bill, which provided for the Church in Tasmania an endowment of a lump sum of £100,000 in debentures, and stipends of all clergymen belonging to the State-paid denominations who had vested interests at the time of the passing of the Bill. After a lengthy debate the Bill passed the House of Assembly by a majority of one, and in the Upper House by 8 votes against 5. This Act was entitled "The State Aid Commutation Act," and the debentures were delivered July 1st, 1869, to the governing authorities of the favoured Churches for sums as follows:

Church of England . .	£58,466	13	4
Church of Rome . .	23,106	13	4
Church of Scotland . .	7,866	13	4
Wesleyans	7,333	6	8
Free Church of Scotland .	2,806	13	4
Jews	420	0	0[5]

[1] Therry, *op. cit.*, p. 480.
[2] *Ibid.*, pp. 481 f. [3] *Ibid.*, p. 483.
[4] Acts of Parliament of Tasmania, No. 30, 1868.
[5] James Fenton: *History of Tasmania*, p. 333, London, 1884.

The Victorian Act to provide for the Abolition of State Aid to Religion[1] did not receive the Royal Assent till January 6th, 1871. It provided for the abolition of grants after the lapse of five years ; and also laid down that all lands granted by the State for Church purposes should be retained as the property of the several denominations.

In South Australia, which had been granted an independent Legislature in 1834,[2] a majority vote of the Legislative Council decided to discontinue all State support to the Church in 1851. In this way the vote of £500 a year, which the South Australian Government made early in 1847, came to an end.[3]

In West Australia, State Aid did not cease till 1895. In that year the Legislature passed " An Act for the Termination of the Parliamentary Ecclesiastical Grant." The following payments were to be made to each of the respective denominations from the Consolidated Fund :

To the Church of England . .	£20,042	5	0
,, Roman Catholics . .	10,085	17	6
,, Wesleyans . . .	3,686	14	2
,, Presbyterians . . .	1,615	3	4
	£35,430	0	0

These payments were to be " in lieu of the said Ecclesiastical Grant, and the said Grant shall from and after the passing of this Act wholly cease."[4]

VIII. English Aid

The withdrawal of State Aid from the Church meant that it was no longer possible for her to pursue her career without further support from the Home Country. This help came chiefly through the different missionary societies, as we have seen. The chief contributors were the S.P.G. and the S.P.C.K., though liberal grants were also made by the Colonial and Continental Church Society and, to a less degree, the C.M.S. Between the years 1793 and 1900 the S.P.G. gave a total of £253,598, and in the period 1820 to

[1] 34 Vic., No. 391. *The Victorian Statutes. The Public and Private Acts of Victoria*, Vol. VI, Part IX, p. 527. Melbourne, 1890.
[2] Cp. p. 35.
[3] Cp. Whitington : *Augustus Short*, pp. 78, 80.
[4] The complete text of the Statute may be found in *Code of Statutes, Diocese of Perth*, 1907. Published at Perth.

1898 the S.P.C.K. a sum of £86,440. For the purpose of the creation of new dioceses, as we have seen, large grants were available from the Colonial Bishoprics Fund. But there were also such supporters as Baroness Burdett-Coutts, as well as the Societies who came forward in time of need.

In recent years, however, the Australian Church had become less and less dependent financially on the Home Church. The Societies find too many urgent calls on their funds from other parts of the world to be able to disburse large sums to a prosperous Commonwealth like Australia. That the Church must be self-supporting is now generally recognised. But to say this does not mean that the Australian Church has ceased to receive support from the Mother Country. Support is given generously, but usually through private individuals. The fact that many of the Australian bishops, as well as some of the clergy, are still drawn from the ranks of the Church at home, is, at any rate financially, a considerable asset to the Church in the Commonwealth. Some of the Bishops consecrated for work in more sparsely populated dioceses of the Commonwealth make provision for some support from England for the work which they are to take up. It is, however, natural that, as the majority of these contributions are of a personal nature, it is extremely difficult to determine their amount.

CHAPTER XIII

THE GENERAL SYNOD

I. Introductory

THE history of the Australian Church is reflected in the history of the Commonwealth. Originally, the unity between the different settlements was practically nothing more than a geographical unity. Different Colonies were founded at different points around the coastline; and though attempts were made to bring about a certain unity of legislation, with its centre in Sydney, the scheme never worked effectively; and it was only the natural course of events when almost complete disintegration ensued in the middle of the century, and the several Colonies were granted independent Legislatures. In more recent years, of course, a Federal Government has been established in the Commonwealth. But the mutual jealousies of the different States rendered the task no easy one, as is seen in the necessity for the creation of the Federal Capital. And it is, moreover, significant that the Commonwealth unity finds expression in what is termed a "*Federal* Government," —that is, a Government which is composed of a *federation*, rather than a *union* of the individual States.

Exactly so with the history of the Church. After the epoch-making Conference at Sydney in 1850,[1] the bishops returned to their dioceses; but as we have seen, each bishop carried out the proposals in such a way as seemed best to his own individual judgment. The co-operation between them was almost negligible. Each made his own journeys to England to consult the Home authorities. But the time came when the bond which united the Church to the Home Country, was, in fact, if not in theory, weakened, mainly because of the growth of each Colony and the greater measure of self-support of the Church which ensued.

It was only natural that in such circumstances the Church

[1] The Bishop of Goulbourn (New South Wales) recently said to me that this Conference was "the pivot on which the whole subsequent history of the Church in Australia turns."

in Australia should attempt to settle its affairs by co-operation between the various dioceses, rather than by continual reference to the Mother Church. The General Synod was the logical result of these strivings. But, as we shall see, as in the case of the civil history, a federation, rather than a union, was arrived at; and the Church in Australia was organized, till recently, in principle, and to a still larger degree, in practice on an extension of the congregational system.[1]

II. Events Preparatory to Conference

Two events of great importance preceded the establishment of General Synod. The first was a recommendation of Convocation of Canterbury in 1860, the second was a resolution of the Pan-Anglican Synod of 1867.

i. The recommendation of Convocation referred to affirmed that "There seems to us to be special need of combined counsels to maintain in unity the Church as it extends. That by a regular gradation of duly constituted Synods, all questions affecting unity might be duly settled; —Diocesan Synods determining all matters not ordered by the Synod of the Province; Provincial Synods determining all matters not ordered by a National Synod; a National Synod ordering all matters not determined by a General Council. Unity with necessary variety might thus be secured to our spreading branch of the Holy Catholic Church."[2]

ii. The resolution of the Pan-Anglican Conference ran, "That, in the opinion of this Conference, unity in faith and discipline will be best maintained among the several branches of the Anglican Communion by due and canonical subordination of the Synods of the several branches to the higher authority of a Synod or Synods above them."[3]

III. Conference at Sydney, 1868

In the consecration of the new cathedral in Sydney on St. Andrew's Day, 1868, seven of the Australian bishops took part.[4]

[1] The Church Assembly does not refer back the measures passed by that body to the Diocesan Conferences as it is incumbent on the General Synod to do, when it has passed a "Determination." When the new (1926) Constitution comes into operation, the position will be somewhat modified.

[2] Session XVI. June 8th, 1860. Upper House, p. 293. Cp. p. 717. *The Chronicle of Convocation of Canterbury.*

[3] Resolution IV. (*The Five Lambeth Conferences*, 1867–1908, p. 54).

[4] Barker, of Sydney; Short, of Adelaide; Perry, of Melbourne; Tyrrell, of Newcastle; Tufnell, of Brisbane; Thomas, of Goulbourn; Bromby, of Tasmania.

They did not fail to use the opportunity afforded for holding a Conference which sat from November 23rd to December 1st. Their discussions were not limited to the question of the formation of a General Synod, as the following list of topics[1] reveals :—

i. The Present Relation of the Church of England in the Province of Australia to the Church at Home and the Best Mode of Maintaining such Relation.
ii. The Mode in which Colonial Bishops should be appointed.
iii. The Constitution of a General Synod and its Functions.
iv. The Constitution and Functions of a Tribunal of the General Synod and of a Council of Reference.
v. Tribunal for the Trial of a Bishop.
vi. Oath of Canonical Obedience.
vii. Resignation of Cures.

The proceedings did not run as smoothly as might have been hoped ; and differences of opinion arose on the extent to which the Church in Australia should attempt to remain bound by the decisions of the English Church. The jealousies of the different dioceses manifested themselves ; for Bishop Barker of Sydney on no account wished his diocese to lose the honour of possessing the Metropolitan See which the Letters Patent professed to give it.[2] But at length agreement was reached, and all the bishops affixed their signatures to the recommendations.

The 3rd and 4th Sections deal especially with the Constitution of the proposed General Synod. The Synod is to consist of the Bishops and representatives of the Clergy and Laity of the several Colonies. Proposals are put forward for the convening of a Conference to determine the Constitution of the General Synod : " The object of such General Synod should, in our opinion, be, to maintain the relation of the Church in the Province of Australia to the United Church of England and Ireland, both at home and in the various Colonies ; as well as to secure unity of doctrine and discipline between the several branches of the Church in that Province."

As its authorized functions, the following are laid down—

i. To constitute a Metropolitan Court of Appeal.

[1] Derived from the Minutes of the Conference, Document S.
[2] Cp. Whitington, *op. cit.*, pp. 194 f.

ii. To frame general rules for the formation of new Dioceses and Provinces.

iii. To make rules for the confirmation and due consecration of newly-elected Bishops.

iv. To communicate with the authorities of the Church at Home and in the various Colonies on all matters relating to the general well-being of the Church.

v. To consult upon any matters which may be brought before the Synod affecting the well-being of the Church in the Province ; and to frame regulations thereon, such regulations to take effect in the several Dioceses, from and after the Session of each Diocesan Synod, to which they have been communicated, provided that they be not, and so far only as they are not, disallowed by either the Clergy or the Lay Representatives of the Diocesan Synod in such Session.

vi. To take measures for promoting inter-communion between the Church in the Province and other Reformed Episcopal Churches.

This list is hardly to be regarded as complete, since " it appears to some of us that more directly controlling powers in the General Synod are, judging from ancient usage, essential to the complete organisation of the Church."

A whole section (the fourth) is devoted to the Constitution and Functions of a Tribunal of the General Synod. " There should be, in all cases in which any question of faith or worship is involved, a right of appeal from the decision of any Bishop or of any Diocesan Tribunal within the Province of Australia, to a higher Tribunal, which should be constituted by the proposed General Synod." This Tribunal is to be composed of the Metropolitan (or some other Bishop appointed by him) ; of two other Bishops ; and of two laymen learned in the law. It is suggested that a " Council of Reference be appointed in England as a court of higher appeal, since it is doubtful if it would be possible to carry an appeal to the Judicial Committee of the Privy Council." On this Court of Reference, the Archbishop of Canterbury, or his representative, should serve.

Another section (the fifth) proposes that a Tribunal shall be appointed for the Trial of Bishops.

A concluding resolution recommended that copies of the Minutes should be sent to all the Anglican Bishops both at home and in the Colonies.

IV. The Reception of the Proposals

The proposals of the Conference were received with great satisfaction in the respective dioceses. In fact, the powers eventually proposed for the General Synod were so restricted that there was very little to which exception could be taken. In the Diocese of Victoria, for example, at a Conference held soon afterwards, the following resolutions were passed :—

i. "That it is desirable that there should be constituted a body, having the character of a General Synod, for the entire Province of Australia, as mentioned in the Conference of the Metropolitan and bishops of the United Church of England and Ireland in the Province of Australia, held at Sydney, A.D. 1868."
ii. "That such Synod should consist of the clergy and laity of the Church in the several colonies comprised within such Province."
iii. "That the following (names to be hereafter inserted) should be the representatives of the clergy and laity for the Church in Victoria."[1]

V. The First General Synod

It was on October 10th, 1872, that the Conference for which recommendations were issued in 1868 finally met. Bishop Tyrrell, writing of it, says :[2] "Ten Bishops were present ; five from New South Wales, and the Bishop of Adelaide, the Bishop of Melbourne, the Bishop of Tasmania, the Bishop of Brisbane, and the Bishop of Perth : and, on an average, about three Clerical and three Lay Representatives from each Diocese ; many of them really able men, especially Sir William Stawell, the Chief Justice at Melbourne." In spite of much diocesan jealousy, the Bishop of Newcastle was able to describe it as "a most delightful meeting" ;[3] and, referring to the Metropolitan's opening address, to say that it "set the example of that truly Christian tone which was happily preserved throughout ; notwithstanding some serious differences of opinion respecting the authority to be given to the Synod over Diocesan Synods."[4] Two days were spent in settling the Constitution ; and, when this was done, the members formally

[1] Quoted in Goodman, *op. cit.*, p. 382. [2] Boodle, *op. cit.*, p. 258.
[3] *Ibid.* [4] *Ibid.*

resolved themselves into a General Synod under the terms of the Constitution drawn up.

This Constitution, apart from some minor amendments, is that by which the General Synod is still bound. In its original form, it is to be found among the Documents (Document T) on p. 271. The original document, which contains fourteen clauses, is prefaced by a Preamble, the only interest of which is, that reference is made to the "Church recently styled the United Church of England and Ireland, and now styled the Church of England in Australia and Tasmania."[1] The Bishop of Sydney, for all purposes of this Constitution, is to be known and designated as Primate (Clause 1).

The General Synod is to consist of two Houses, namely, the House of Bishops and the House of Representatives; these Houses shall sit together, but vote separately (Clause 3). The latter House is to be elected on a somewhat detailed scheme of Proportional Representation (Clause 4). "A period of not more than 5 years shall elapse between the ordinary meetings of the General Synod, but the Primate may at his own discretion and shall at the request in writing of a majority of the other Bishops of the said Dioceses summon a Special Meeting of the General Synod" (Clause 5). The Primate, or, in his absence, the senior Bishop, is to fill the office of President (Clause 6). The General Synod has power to make Determinations about the following matters:—

i. The constitution of an Appellate Tribunal and a Tribunal for the trial of Bishops.
ii. The framing of general rules for the formation of new Dioceses and Provinces.
iii. The making of rules for the confirmation and due consecration of future Bishops and the election or appointment of future Primates.
iv. The communicating with the authorities of the Church in England and in the various Colonies on matters relating to the general well-being of the Church.
v. The taking of measures for promoting intercommunion with other Reformed Episcopal Churches so far as is consistent with the principles of the Church of England.

[1] The Irish Church was disestablished as from May 1st, 1871, by 32 and 33 Vic., cap. 42. Hence the change in name.

vi. The regulating of the relations of the Church to other branches of the Church of Christ.
vii. The promoting of the cause of Home and Foreign Missions in the Church.
viii. The consulting upon any matters which may be brought before the Synod affecting the well-being of the Church and framing regulations thereon.

And then follows the most important regulation of all: "Provided always that no Determination of the General Synod shall be binding upon the Church in any Diocese unless and until such Determination shall be accepted by the Church in such Diocese, and the mode of accepting in any Diocese the Determinations of the General Synod shall be laid down by the Church in such Diocese" (Clause 8). Changes in the representation may be made if the General Synod shall so determine (Clause 11). Clause 14 deals more explicitly with changes in the Constitution. In 1905 another Clause (15), which deals with the inclusion of British New Guinea, was added.

VI. The Congregational Principle

How far was the Synod to be a federation and how far a unity? This was the great problem. It reflected the whole question as to the relation between the Church and the Churches. Congregationalism has always upheld the one ideal; Catholicism the other. And, on the appeal to primitive history of the Church, opinions have been equally divided. The one view was held by the famous Bampton Lecturer of 1881,[1] the other view by the equally famous Bampton Lecturer of 1920.[2]

As we shall see, the General Synod came down on the side of Congregationalism. But this did not take place without considerable dissatisfaction at the time, and expressions of regret later.

One of the chief opponents of the Congregational principle laid down in Clause 8 of the Constitution was Bishop Tyrrell. His biographer tells us that he maintained that, in points which came under its authority, it should be *supreme over the Diocesan Synods;* but he forbore to press this point, because the Melbourne Synod, which was *legalized*,

[1] E. Hatch: *The Organization of the Early Christian Churches*, Bampton Lectures for 1881.
[2] A. C. Headlam: *The Doctrine of the Church and Christian Reunion*, Bampton Lectures for 1920.

had sent its Representatives *pledged* not to assent to anything which would give controlling power to the General Synod; and, as a man of honour, Sir W. Stawell felt himself bound not to vote for giving it such power, even though he was convinced that it ought to be given. The Bishop says:— "I then asked whether I might depend upon his using his influence in the Melbourne Synod to bring about such a change of opinion and requirement; so that when the General Synod met again I might expect that the Melbourne Representatives would be prepared to support the measure. He replied 'Certainly'; that he himself quite agreed with me, even now, and expected that the Melbourne Synod would, before five years had passed, be of the same opinion. At all events, he would do his best to bring about such a change of opinion; and would never again allow himself to be placed in the very undesirable position of being obliged by a promise previously given to oppose what he himself believed to be best. With this I am quite satisfied, as the Sydney and Goulbourn Bishops and Representatives were all pledged in the same way. And I have hopes that the next General Synod, when it meets, will have its proper authority given to it, with binding power over the different Diocesan Synods, *within the clearly defined sphere of its action.* For this should ensure the proper liberty of the Diocesan Synods: not the limiting *the authority* of the General Synod, but clearly limiting the sphere of its action.' "[1] This somewhat lengthy extract is given to show that even as early as the first General Synod there was a strong current of feeling that the ideal had not been attained.

VII. Later Opinion on the Congregational Principle

From the date of the first Synod onwards objections have been urged against the Congregational principle in the General Synod's Constitution. Many examples might be given. Thus Bishop Bromby of Tasmania, in his last pastoral charge, "expressed his regret, through absence from the last General Synod, at missing the opportunity of renewing his protest against the fundamental and fatal flaw in the Constitution of that body—its not claiming binding force for its Determinations, but submitting them to the Dioceses for approval. He hoped that the Provincial Synods,

[1] Boodle, *op. cit.*, pp. 258 f.

whose creation is contemplated, would avoid this radical defect. If so, he prophesied that the formation of Provincial Synods, rightly constituted, would involve the decay of the General Australian Synod."[1] A more recent expression of the same feeling is to be found in a Pan-Anglican Congress Paper of 1908.[2] Canon (now Bishop) Stephen writes: "The present needs of the Anglican Communion suggest more cogent reasons for a central authority. And on this point we may pay special attention to the Church in Australia. There is a danger connected with our ecclesiastical legislation which at no very distant date may become serious. Our synods are composed of both clergy and laity. The standard of theological education is not always very high. The feeling of freshness and independence connected with a new country causes an imperfect sympathy with tradition. Reverence for antiquity and appreciation of the importance of historic continuity are not marked features in the majority of our members, and as the number of those trained in an English atmosphere naturally decreases, there is a tendency to pay too little attention to the teachings of the past. It is possible then that in a Diocesan Synod a resolution or act may be passed which is in conflict with the doctrine or practice of the Catholic Church. As an illustration we may mention the fact that a resolution in favour of marriage with a deceased wife's sister has already been passed by a Diocesan Synod, and such eccentricities of opinion may find more frequent expression. At present there is no safeguard provided by our system. On Catholic principles the Diocesan Synod would be subject to the Provincial Synod, and the Provincial Synod to General Synod of Australia. But in Australia some Dioceses are autocephalous, and even those which are grouped in Provinces are not always under authority. In the case of two out of our three Provinces, the Diocese is supreme and can reject provincial legislation. And as far as the General Synod is concerned every Diocese is independent and is only bound by the Determinations of the higher body if it chooses to accept them. It is obvious that our system of chartered anarchy is a strong argument in favour of establishing a central authority." It would hardly be possible to put

[1] Quoted Whitington, *op. cit.*, p. 195.

[2] "The Anglican Communion in relation to its parts." By Rev. Canon Stephen, Melbourne, Australia. *Pan-Anglican Papers*, 1908. S.F. III, h. Canon Stephen was until recently Bishop of Newcastle, New South Wales.

more clearly the case for a more centralized basis of Constitution.

VIII. Later Meetings of the Synod

The Synod has continued to meet regularly since 1872, and Reports of its proceedings are published. That of 1876, which has been described as "a very barren and disappointing one,"[1] ratified the 1872 Constitution. It also passed a Determination, containing rules for the formation of New Dioceses[2] and for the election of Bishops to such Dioceses. The third Synod of 1881 made some important determinations. The Primacy was permanently attached to the See of Sydney;[3] a scheme was adopted for the formation of Provinces, the election of Metropolitans, and the conferring of the title of Archbishop subject to the approval of the Lambeth Conference; Determinations were made on the Constitution of Provincial Synods;[4] and a Determination was designed to regulate the trial of Bishops.[5] The Determinations of the later Synods were on substantially the same lines. It does not appear to matter of which year we turn up the proceedings; we invariably find a large amount of the discussions and the Determinations devoted to tedious questions concerned with its Constitution. The impression, it must be confessed, is at times produced that the General Synod is more concerned with maintaining its rights than with exercising them—a fact which may betray its consciousness of its own impotence. As an example of a later General Synod, I select that of 1905.[6] The first Determination is a "Determination to provide for the Final Passing of a Determination to provide for an Addition to the Constitution of the General Synod." The second is concerned with rules for the Confirmation and Consecration of Bishops. The third deals with the election of a Bishop of Carpentaria. The fourth and fifth provide for the formation of the Diocese of New Guinea, and its inclusion within the Province of Queensland. The sixth treats of Bishopric Endowment funds. The seventh provides for the creation

[1] Whitington, *op. cit.*, p. 198.

[2] Document U.

[3] Determination I of the General Synod of 1900 took the Primacy away from Sydney as *of right*. It made the rule that when the Primacy becomes vacant, one of the Archbishops (not necessarily that of Sydney) is elected Primate. The General Synod of 1910 slightly amended this Determination, and drew up rules for the mode of election (Determination VI, 1910). But up till the present date, Sydney has always been the Primatial See.

[4] Document V.

[5] Cp. *Proceedings of the General Synod Session*, 1881. *Passim.*

[6] Cp. *Proceedings of General Synod Official Report*, pp. 197–218.

of an "Australian Clergy Provident Fund." The eighth returns to the old theme; it is headed "Rules to alter the Constitution of the General Synod." The ninth contains "Amended Rules for the Constitution of the Board of Missions." The tenth gives "Rules for the Election of Metropolitan." The list closes with the theme of the first and the eighth: it is a "Rule to provide for the Approval of the Synod being given to certain alterations of the Constitution."

IX. A Crucial Case

At the 1916 Session there were certain alterations made in the Constitution of the General Synod in reference to the method of representation of clerical and lay members.[1] Doubt arose as to how far this change in the Constitution was legally justifiable. To grasp the intricacies of the situation, it is necessary to find in such problems the fascination which attaches to a game of chess. It is quite impossible to discuss here either the problems or the opinions obtained from the eminent counsel to whom they were submitted. They will be found printed on pp. 99–106 of the *General Synod Official Report* for 1921. The main difference of opinion arose from the method of procedure rather than from the principles involved; the promoters of the measure insisted upon the form of internal "Rules."

The opponents contended that a change in the Constitution was involved, and that the only valid method was to proceed by Determination. General Synod, however, passed the Rules purporting to change the representation. Subsequently, the question was referred for the opinion of eminent lawyers, including Lord Phillimore, and they all declared the "Rules" to be an invalid form of procedure.

The Measure was re-introduced as a Determination in the General Synod of 1921, passed at that Session, accepted by two-thirds of the dioceses, and finally embodied in the Constitution at the Special Synod of December 1923.

Under this change in the Constitution, the representation of a large city, such as Sydney, is increased by 300 per cent, and that of a country diocese, such as Goulbourn, is reduced by 30 per cent.

The character of this study has naturally led us to be concerned mainly with the *constitutional* aspect of the

[1] The differences between the two Constitutions may be seen by comparing Document T with the amended Constitution in H. L. Clarke, *op. cit.*, pp. 109–113.

General Synod; and viewed from this standpoint, we see the General Synod at its weakest. But its inherent constitutional defects have not prevented its achieving in practice sufficient good work to justify both its creation and its existence. If it has been unable effectively to legislate, it has at least been of service for mutual co-operation; and there has been a considerable number of its most important Determinations which have received almost universal approval from the dioceses. A glance at the table of its legislation sufficiently indicates this.

Within the ambit of its powers the General Synod has created three bodies of considerable service to the Church in Australia:

i. *The Australian College of Theology.* Although this is substantially only an "examining" body it has contributed materially to the raising of the standard of clerical education. It has been also of material assistance to Diocesan Bishops in dealing with the qualifications of postulants of Holy Orders.

ii. *The Australian Board of Missions.* This body has co-ordinated and stimulated the work of the Church in the sphere of Foreign Missions, and missions to the heathen generally, particularly to the native races of the Pacific.

iii. *The Australian Clergy Provident Fund.* This fund is now well established on a sound actuarial basis. It has afforded, particularly to the smaller and poorer Dioceses, a valuable means of providing for the superannuation of clergy in their old age or when disabled by sickness. Apart from these three specific instances, the work of General Synod has not been negligible. Until it dealt with the subjects of episcopal appointments and to the creation of dioceses, these questions were left either undetermined or vested at most in the Diocesan Synods. In the case of a vacancy, a diocese could elect its own bishop, without any reference to or control by the Church at large; and dioceses could subdivide without any sanction by higher authority. Provision has been made under the existing Determinations, requiring the appointment of a Bishop to be confirmed by the other bishops of the Province; and dioceses and provinces can be created only in accordance with prescribed rules, which at least retard even if they do not ultimately prevent, hasty or ill-considered action.

In spite, therefore, of the illogicalities in its constitution, General Synod has functioned in a manner which has been not without gain to the Church in Australia.

CHAPTER XIV

THE LEGAL NEXUS

I. Introductory

IN the preceding chapters an attempt has been made to outline the more significant features in the history of the Australian Church Constitution. We cannot fail to be impressed by the fact that the growth was one dictated at every turn by external circumstances, by the attitude of the State, by the individual ideas of the different bishops, by the differing conditions of each diocese. If we search for the working out of fixed principles, inherent in the Church from the beginning, we shall search in vain. No one, indeed, who knows the facts of the history would ever attempt to embark on such a search. In biological language, the growth has been one determined mainly by environment, and only to a small extent by heredity. Circumstance, not principle, has been the leading factor in the Australian Church's Constitutional development.

Such being the case, there is room for doubt as to the principles which govern that Church even at the present time. How far is the Church bound by the State in the different Colonies? How far is the bond of union in those states possessing Church constitutions with the basis of legislative enactment stronger than in those with their basis in consensual compact? And, above all, what of the relation to the Church at home? On all such questions there is some diversity of opinion, even among those who are fully competent to give opinions.

But such doubt as to the question *de facto* is very small compared with the differences on the questions *de jure*. Assuming that the questions are settled as to the actual bond of relationship which exists in each case, there arises the question as to whether, and if so, how far, a change is desirable? The recent history of the Church has shown an ever-growing demand for greater freedom for self-determination, and consequently a weakening or even abolition of those

legal bonds by which she has been fettered. The history of this movement will be the subject of this and the following chapters.

II. The "Legal Nexus"

That there is at least some legal bond of attachment between the Church in Australia and the Church at home is evident; and it is hardly less evident that the bond is closer in those Churches organized on the basis of "legislalative enactment" than on that of "consensual compact." This bond is known as the "legal nexus." It is primarily with a view to its removal that the Church in Australia is at present seeking powers. If the nexus is removed, then the Australian Church will have, for example, that freedom to revise its Prayer Book which is possessed by the Canadian and Scotch Churches. It must, however, be noticed at the outset that the whole question is largely academic. There appears, as a matter of actual fact, to be little felt need of a revised Prayer Book in the Commonwealth, nor, indeed, of any other change which the Australian Church is hindered from bringing into effect in virtue of the "legal nexus." But, as we have seen above, the Australian Church has always been partial to discussions on matters of ecclesiastical legislation; and the present position with regard to the "legal nexus" gives its members plenty of opportunity to exercise this interest.[1]

III. The Beginnings of the Movement for Autonomy

The movement to secure complete autonomy for the Church in Australia was set on foot more than thirty years ago. The subject was before the General Synod in 1890. It was obviously desirable that any attempted solution of the theoretical and practical problems relative to the "legal nexus" should be tackled by that Synod. At that time the proposal was strongly resisted by those who feared that it would mean separation from the Church of England, and the same alarm has been raised repeatedly by the opponents of Autonomy. It is necessary, very briefly, to recapitulate. The Church in South Africa, as a result of the Colenso Case, by its Constitution (adopted by its Provincial Synod in 1870) asserted its independence of the decisions of the

[1] Questions relative to the "legal nexus" are discussed in the Australian Church newspapers with an ardour comparable with that exercised in our own sacramental discussions.

English Courts and set up its own tribunals. In 1882 a Privy Council Judgment decided that this action of the Provincial Synod had severed the "legal nexus" between the Church of England and the Church in South Africa. To allay the fears of those who supposed the "legal nexus" a vital necessity, and that the loss of it might mean a breach with Canterbury, Archbishop Jones, of Capetown, wrote to Archbishop Tait asking whether the spiritual "nexus" between England and South Africa was affected by the breaking of the legal bonds. Archbishop Tait replied: "No changes which have taken place in the Church over which you preside have in any way separated it from full communion with the Mother Church of England." Some years later Archbishop Benson wrote even more emphatically in the same sense. He said: "I cannot conceive that there is any flaw in our spiritual unity; that any Church in the world can be in union with us if you are not, or that any condition of our law or of your Constitution could make the spiritual bond closer."

The Church in Australia lags behind the Church in Canada and South Africa in regard to such local autonomy. She is bound by the "legal nexus." Apart from legal inability to sever it, a great amount of opposition has been raised to it, and not from one party only in the Church. It has often been confused with that spiritual nexus or bond of union with the Mother Church which finds its expression in the Lambeth Conferences and in a continual consciousness of the realization of a common history and a common life. This bond is just as strongly and deeply felt and cherished in the free and independent Canadian Church as it is in the Australian Church.

IV. The General Synod of 1905

As a preliminary to a full consideration of the question from the legal standpoint the General Synod of 1905 passed the following resolution: "That the three Archbishops and the Bishop of Perth be a Committee to consider what is the legal *nexus* of the various Dioceses in Australia and Tasmania with the Church of England in England; to obtain legal opinion in the Commonwealth and in England; to consult with the Archbishop of Canterbury; and to report to the respective Bishops in the Dioceses of Australia and Tasmania."[1] The motion which was proposed by the Bishop

[1] *General Synod Report*, 1905, No. 349, p. 76.

of Grafton and Armidale, would appear to have been occasioned by a request from the Synod of the Diocese of Sydney.[1]

V. The Case Submitted

In the 1910 General Synod Report the results of the work of the Committee up to that date are given. The Report of the Committee is printed as an Appendix to the Synod Report of that year.[2] This document is prefaced by a statement that legal opinion is being sought in the Home Country, though no reply had as yet (Oct. 11th, 1910) been obtained. It was signed by the Archbishops of Sydney, Melbourne and Brisbane.[3] The case opens with a highly valuable historical survey of the chief events in the civil and ecclesiastical legislation of the different Australian Colonies. Then followed ten questions which were submitted to the English and Australian counsel. In view of their importance we give them together with the answers from the English and Australian Counsel in the next sections.[4]

VI. The Replies

The English reply (*E*) is signed by Arthur Cohen, Robert Cecil, and A. B. Kempe, and dated June 20th, 1911, the Australian reply (*A*) by Adrian Knox[5] and J. Musgrave Harvey.[6] There is general agreement in the answers to all the questions, though differences in detail—largely owing to difference in the interpretation of the questions themselves,—are discoverable. We will consider the questions in turn.

1. *What is the effect of the Letters Patent purporting to confer jurisdiction and mission in view of Imperial and Colonial legislation ?*

Both are agreed that Letters Patent are no longer of any validity (cp. pp. 73 f.). Thus *A* quoting *re* Bishop of Natal 3 Moc., P.C., N.S., at p. 151, states that " at the present time, the letters patent in question have no legal effect, but

[1] *General Synod Report*, 1910, p. 91.
[2] Appendix XII, pp. 90–106.
[3] Not, however, by the Bishop of Perth, who was, according to the 1905 Resolution, also to be a member of the Committee.
[4] They are to be found in a small pamphlet entitled *Legal Nexus, Case with opinion*, n.p.d.; and in the *General Synod Report*, 1916, Appendix I, pp. 57–86.
[5] Now (1928) Chief Justice of Australia.
[6] Now (1928) a Puisne Judge of New South Wales.

the bishops depend upon consensual compact for their election and their Sees."

2. *How far do the South African cases cited apply to the Church of England in Australia and Tasmania? See In re Jenkins, Law Reports, 2 P.C.*

Both are agreed that, in so far as they are applicable to the conditions of the Church in Australia and Tasmania, the South African cases apply equally to those Churches.

3. *To what extent does the law of the Church of England bind the Bishops, Clergy, and Laity and persons holding property in trust for Church of England purposes or similar purposes in Australia and Tasmania?*

It is necessary to determine what the expression "the purposes of the Church of England" actually means (*E*). But it is clear that doctrinal unity with the Church as it is in the Mother Country is implied. Thus *A* quotes the Merriman *v.* Williams case, 7 A.C., p. 507: "One thing which their Lordships conceive to be necessary for establishing such a connection between the Church of England and another Church is a substantial identity in their standards of faith and doctrine. Where the other Church is that of a Colony possessing an independent Legislature, there must be differences, as, for instance, in the appointment of bishops and in the erection of Courts, such as necessarily result from the difference of political circumstances in which the Church of England and the other Church find themselves placed. There may probably be other differences which yet might be too slight to work a disconnection, and which need not now be considered." The Courts in Australia—so *A* continues—having to see that the charitable trusts in question are properly carried out, enquire what are the trusts. Those trusts are declared by reference to the state of things in the Church of England in England. It appears to us that technically it would be necessary to put in evidence here any decision of the English Courts bearing on the points in dispute, including even decisions of the Privy Council. *E* not unreasonably declines to give a definite opinion on the ambiguous implications of the words "similar purposes." Where property is held in trust "for Church of England purposes or similar purposes," such similar purposes not being further defined by the instrument creating the trust, it would be for the Colonial Court to determine whether any particular use of the property was or was not a use for a purpose

similar to the purposes of the Church of England as ascertained according to the principles above laid down. It does not appear to us that any general statement can be made as to what would or would not be regarded as "a similar purpose."

4. *How far would the proviso for interpretation and meaning set out in Clause* 5 *of the Constitution of the Diocese of Brisbane be applied by a Civil Court in any of the Australian States in the decision of any action brought before such Court?*
   (*a*) *Arising within the Diocese of Brisbane.*
   (*b*) *Arising within the Diocese of Rockhampton.*
   (*c*) *Arising in a Diocese not constituted by consensual compact.*

Neither of the counsel discriminates between the three cases which were propounded, namely, the Diocese of Brisbane, the Diocese of Rockhampton, and any diocese not constituted by consensual compact. Both of them refer back to their answers to the previous question. In cases of property (for which alone the civil authority would interfere) the Colonial Courts would be bound to decide the question "in conformity with any judgments, orders, and decrees relative thereto, given or made in any English Court, or any Court of Law in Great Britain, or any Judicial Committee of the Privy Council" (*E*). Consequently a provision such as that referred to in the question is really irrelevant and unnecessary (*E*). In illustration, *A* refers to Free Church of Scotland *v.* Overton, and Bishop of Natal *v.* Gladstone, 3 Eq. at p. 36.

5. *Is it competent for*
   (*a*) *Any Diocesan or Provincial Synod, or*
   (*b*) *The General Synod to pass any Canon, Ordinance or Determination altering or contravening any and what part of the Ecclesiastical law of the Church of England or the Liturgy or formularies of such Church?*

Here again both are agreed that the essential question is that of the possession of the Church's properties. Apart from this question, however, the Church can pass any Canons, or Determinations that it desires, and these will be binding on its members "regarded as a Voluntary association" (*A*). As regards property, however, writes *E*, "we do think that, under the present constitution of the various dioceses

in Australia and Tasmania, it is not competent for any Diocese, unless authorized to do so by further legislation of the State in which it is situate, to adopt any Canon, Ordinance, or Determination, the effect of which would be to deprive them of such right. If any attempt were made to effect such deprivation the Civil Courts would interfere to protect the persons so deprived."[1] *A* thinks, however, that certain minor modifications "the Court might consider to be so slight as to be immaterial, or to be the necessary outcome of its non-political status," but it does not instance any cases which might be so considered.

6. *How far it is competent for*
   (*a*) *A Diocesan Bishop,*
   (*b*) *A Metropolitan,*
   (*c*) *The Primate of Australia,*
   (*d*) *An Episcopal Synod*

to permit the use of services not provided by the Book of Common Prayer?

Both refer here to the famous "Act of Uniformity Amendment Act of 1872." "At first sight," says *A*, "it seems an obvious answer to say that no legislation in England in 1872 could affect the position in the self-governing Colonies, or that at all events the trusts are to be ascertained once and for all at the date of the declaration of trust, the interpretation of which is in question." But, "Where property has been settled by a benefactor or otherwise for the purpose of the Church of England, it appears to us that in default of any distinct declaration to the contrary in the declaration of trust the Court might very well assume the intention to be that the Church in England and Australia should continue to move side by side, and that any alteration of practice properly made in England should be followed in Australia."

E is of the opinion that, even if its provisions have no application to the Church in Australia, "it would be open to any Diocesan Synod to adopt the provisions of that Act without any violation of the law of the Church of England."

7. *Would the granting of permission to use such services render any Bishop or Archbishop guilty of an offence under the Determination of General Synod relating to the trial of Bishops?*

[1] To illustrate, *E* quotes the following cases: Craigdallie *v.* Aikman, 2 Bligh, 539–541; Milligan *v.* Mitchell, 3 My. & Cr. 72; Forbes *v.* Eden, L. R. 1 Sc. App. 568 per Ld. Cranworth at p. 581; Free Church of Scotland *v.* Lord Overton (1904), A.C. 515.

To this question, both *E* and *A* reply in the affirmative, though with a restriction concerning changes in accordance with the Act of Uniformity Amendment Act 1872.

8. *If it is not competent for any Synod to pass such Canons, Ordinances or Determinations as are mentioned in Question* 5, *would the effect of legislation so passed be merely null and void as ultra vires, or would it destroy the connection with the Church of England? See Merriman v. Williams, 7 App. Cas., p.* 484.

Such an alteration, according to both *E* and *A* would be *ultra vires* and illegal. Both are agreed, too, that if the synod of a diocese passed unanimously such legislation, then the property would have to be administered by the Civil Courts and devoted to other purposes in accordance with *cy-pres* doctrine. "The vote of a mere majority," continues *E*, "would not, however, produce this result. The minority, however small, would be entitled to continue the use of the churches and other property in accordance with the terms of the Constitution, and their Church would continue part of the Church of England (General Assembly of the Free Church of Scotland *v.* Lord Overton (1904), A.C. 515), though practical difficulties would no doubt be experienced if the Bishop formed a part of the majority. If the majority attempted to use the churches and other Church property in accordance with the altered legislation, the Civil Courts, as indicated in our answer to Question 5, would restrain them."

A is of the same opinion.

9. *Would it be competent for*
   (*a*) *Any Australian State,*
   (*b*) *The Commonwealth*
   to give legislative authority to the Dioceses within the respective ambits of their legislative powers for the altering and amending of the Book of Common Prayer or other formularies without interfering with the present relations between the Church at Home and abroad?

E replies in the negative. "We do not think that it would be competent for the Commonwealth to give such authority. Its powers are given and defined by the Statute 63 and 64 Vic., cap. 12, and that Statute contains no provisions which could be regarded as conferring such authority." Yet minor alterations might be sanctioned. "If the authority thus conferred were acted upon by any diocese so as to effect

such an alteration as would substantially exclude portions of the faith and doctrine of the Church of England, then that diocese would cease to be 'in connection with the Church of England.' (Merriman *v.* Williams, 7 A.C., 484.) Apart from questions of property, which in the case supposed would not arise, it is difficult to see what practical results would ensue from such a severance of connection unless it were of such a nature as to constitute a breach of communion."

Property which was held *in England* for the purposes of the Church of England would, however, be liable to forfeiture. With these conclusions *A* is in agreement.

VII. A Summary of the General Position

The last question submitted was :

10. *Generally as to the status of the Church of England in Australia and Tasmania ?*

The answer given to it by the English Counsel appears to me to be such a clear and accurate description of the present position of the Church in Australia that I cannot refrain from quoting it in full. "The Anglican Churches in Australia and Tasmania are all organised upon the basis that they are not merely Churches 'in communion with' or 'in connection with' the Church of England, but are actual parts of that Church. In most of the States this status is recognized by Statute, and we think that in all it must be taken that this is their actual status. (Bishop of Natal *v.* Gladstone, L.R. 3, Eq. 1.) It accordingly appears to us that, in all of them it is an essential part of their Constitution that they are subject to the same laws as are binding on that Church in England, save in matters which, owing to difference of political circumstances, must *ex necessitate* be subject to different conditions from which exist in England. Accordingly in all matters of faith and doctrine, including conformity in public worship with the Book of Common Prayer, the Church in Australia and Tasmania must be regarded as regulated by the same standards as are in force in England. As the Church of England in Australia and Tasmania is not 'established by Law,' and those Colonies are self-governing, so that the Crown has no power to grant coercive powers there to the tribunals of that Church, it has been necessary for the members of the Church to constitute tribunals for enforcing discipline within their body, the decisions of which will be binding on those who expressly or by implication

have assented to them. The tribunals constituted for this purpose, even where the State has not expressly empowered their establishment (as has been done, e.g. in Tasmania by 22 Vic., No. 2, Sec. 4), are lawfully constituted, and the decisions of any one of them ' will be binding when it has acted within the scope of its authority, has observed such forms as the rules require, if any forms be prescribed, and if not has proceeded in a manner consistent with the principles of justice.' But ' the tribunals so constituted have no power of their own to enforce their sentences ; they must apply for that purpose to the Courts established by law, and such Courts will give effect to their decisions as they give effect to the decisions of arbitrators, whose jurisdiction rests entirely upon the agreement of parties.' Being tribunals appointed by bodies, which, by their constitution, are part of the Church of England, it would be their duty to decide in accordance with the law of the Church of England as laid down by the English Courts and the Judicial Committee, and if they did not do so, and rights of members of the Church of England to have the use of their churches and the ministrations of their clergy in accordance with that law were in consequence affected, the Civil Courts, if appealed to, would, subject to local legislation governing arbitration, interfere to restrain them and to protect those rights."

CHAPTER XV

THE DRAFT BILL

I. Introduction

IN 1916 a resolution was passed by General Synod[1] appointing a Committee for the following purposes :

i. To consider whether the existing legal position of the Church in Australia, as declared by the Counsel to whom the subject was referred,[2] is satisfactory as a permanent basis for Church fellowship.
ii. To send to all the Diocesan Bishops interim Reports on their investigations.
iii. To present a proposed statement as to the terms on which satisfactory conditions of fellowship should be based.
iv. To report in detail upon the steps which should be taken to make such a basis of fellowship operative and effective.

A Committee was appointed consisting originally of the Primate, the Archbishops of Melbourne and Perth, five other bishops, thirteen other clerical members and twelve lay members. This Committee, to which other members were later co-opted, met on thirteen different days between the Synod of 1916 and that of 1921, and about the beginning of 1921 forwarded a Report to the Primate. This Report may be found in the Official Report of the Synod of 1921, pp. 130–138.

II. The Committee's Report[3]

The Committee reported that " in its opinion the existing legal position of the Church in Australia and its relation to the Church in England and to the Anglican Communion is not satisfactory as a permanent basis for Church fellowship within Australia, or for corporate fellowship with the Church of England and with other branches of the Church Catholic

[1] *Official Report*, pp. 36 f. [2] Cp. the preceding chapter.
[3] For the Committee's Report, see Document X.

in communion with the Church in England" (Clause 1). Clause 3 sets forth seven reasons "why the present position cannot be regarded as permanently satisfactory"; "these are of varying weight, and there is an explicit statement that these reasons are not regarded by all members of the Committee as of equal urgency, nor does each member of the Committee necessarily accept each reason set forth as affecting his decision upon the primary question."[1] The Committee attempts to dispel "the fear in some minds lest the provision for the wider exercise of autonomy in the Church in Australia would lead to a breach with the Mother Church."

In Clause 5 it is pointed out that there are "two strongly contrasted courses of action" open to the Committee. These were,

(*a*) To submit a Draft of a new Constitution for the Church in Australia with revised standards and formularies of faith and order.

(*b*) To recommend the obtaining of amendments in our Constitution Acts under which the Church readopts all its existing standards and formularies, but makes provision for the exercise of power as need arises for making such variations in the name and style of the Church and the standards and formularies of faith and order as may be agreed to by the Synods of the Church under safeguards such as the Report instances.

The Committee, it is very important to notice, urged (*b*) against (*a*). The majority of the remainder of the Report is devoted to the enumeration of what are, in the Committee's opinion, the necessary amendments. Reference should be made to the Appendix for its contents.

The Committee, however, was not unanimous on all points. Five members of the Committee (Archdeacons Boyce and Davies, Sir Albert Gould and Messrs. W. J. G. Mann and H. M. Taylor) sent in another Report, known as the Minority Report,[2] in which they urged criticisms of the Majority Report in what they conceived to be "serious fundamental matter." The main burden of their criticism was that under the proposals of the Majority Report "it would be competent to make such complete and drastic

[1] *Official Report*, p. 131.
[2] *Official Report*, 1921, *General Synod*, pp. 139–141.

alterations " in the standards and formularies of the Church of England " as to change entirely the whole character of the Church. It would be possible, for instance, to deal without limitations with such momentous matters as the creeds, Communion in both kinds, and Episcopal Ordination, and to pass such Synodical legislation as would in effect create a new Church in place of the present body known as the Church of England."[1] There was the feeling that the proposed constitution would not give adequate representation to the Dioceses with larger populations. It is noteworthy that both the Archdeacons who signed, as well as Mr. W. J. G. Mann, were representatives at the 1921 General Synod of the *Sydney* Diocese; the fear of this Diocese that the proposed changes would destroy its traditional leadership in the Australian Church manifested itself once again.

III. The General Synod of 1921

At the session of the General Synod of 1921, the question of the Constitution naturally occupied the central place. The Report of the Committee appointed in 1916 was received; and the Primate, in his Presidential Address[2] gave it his support, at least in general terms. The proposal, he insisted, " carries consequences that may vitally affect our Church life of the future," and he expressed the hope that the reception of it would be favourable. " It is only as regards points of detail," he continued, " both in procedure and in organization (very important, however, in themselves and in their relationship to the whole), that I reserve to myself the right to dissent." The Synod passed a Determination which expressed dissatisfaction with the present legal position of the Church of England in Australia. This Determination[3] included a request which was to be made to the Parliament of each State in the Commonwealth for the passing of an Act which should permit of the retention of public and private ecclesiastical properties under the proposed new constitution. After this Determination had passed its second reading, it was purposely proceeded with no further. Second resolutions[4] were passed on October 11th, referring the Committee's Report and the Determination just mentioned to the individual Dioceses for their consideration. The Dioceses were requested to appoint diocesan committees to consider these documents, which

[1] *Official Report*, 1921, *General Synod*, pp. 139 f.
[2] *Ibid.*, p 44. [3] *Ibid.*, pp. 143 ff. [4] *Ibid.*, pp. 145 f.

should report to the respective Diocesan Synods ; and then to forward their suggestions to the central committee not later than July 1st, 1923. They were also requested to submit to the central committee preliminary drafts of the legal enactments (if any) which they recommend to be submitted to their respective Legislatures not later than January 1st, 1924. A Central Committee, the membership of which was nearly the same as that of the 1916 Committee, was appointed. Its duties were to be " to receive the suggestions from the respective Dioceses, to correspond with such Dioceses, and to corroborate and codify such proposals as may be received, and finally submit to the Dioceses a uniform document which in its judgment most nearly expresses the common mind of the Church in Australia." Not later than September 1st, 1924, this Document was to be referred back to the several dioceses for final consideration.

IV. The Central Committee's Meeting, November 27th, 1923

The Central Committee appointed by General Synod met at Sydney, on November 27th, 1923, under the presidency of the Primate. Twenty-three members of the Committee attended. After a full consideration of many aspects of the question the following resolutions proposed by the Bishop of Bathurst were carried unanimously :[1]

" i. This Central Committee appointed by General Synod to confer and report upon the extension of the powers of Management and Government of the Church in Australia and Tasmania, being assembled on the 27th November, 1923, to consider replies from the several Dioceses required under resolution of General Synod to have been forwarded not later than 1st July, 1923, resolves ;—

' That as the replies forwarded by the several Dioceses do not furnish material suitable for welding into a common Constitutional document but do manifest a general desire for more general and more detailed consideration of the Constitutional powers and position of the Church in a Conference or Convention specially summoned for that purpose, it is desirable to report to the Dioceses that the Central Committee has requested the Primate to summon a Special Convention for the consideration of the Constitution

[1] See *Official Report*, 1926, *General Synod*, pp. 82 f.

of the Church prior to the date at which he would ordinarily summon General Synod to meet in the year 1926.

Also that the Committee undertakes in consultation with the Bishops and their Constitutional advisers to have prepared such Constitutional documents as may appear to meet the further needs of the Church in Australia and to circulate such documents among the members elected to the Convention about three months prior to the date of meeting. Such documents to be considered by the Convention and the result of such consideration remitted to the Dioceses with a view to further action.'

The Central Committee realises that this procedure differs somewhat from the form laid down in the resolutions passed by General Synod, but considers that the circumstances of the situation dictate this course as being likely to prove more helpful generally to the Church and as best fulfilling the spirit of the instructions given to the Central Committee."

" ii. That in reply to the Primate's request for suggestions as to the composition of the Special Convention, this Committee begs to suggest that the Primate request the Bishops to convene representatives from their Dioceses to the same number as they would convene representatives to a Session of the General Synod."

V. The Draft Bill

The Draft Bill eventually saw the light at the beginning of 1926, was submitted to and passed by a Convention held from October 12th–21st of that year, and then placed before and passed by the meeting of the General Synod which followed immediately after. Needless to say, the Bill was necessarily in a provisional form. Its face differed considerably at the end of October 1926 from that which it possessed at the beginning of that month. What I propose to do in this chapter is to consider the Bill, section by section, in its original form,[1] and to state its more important proposals ;

[1] The original form of the Draft Bill which was published at the beginning of 1926 was slightly modified long before the Constitutional Convention sat. The regulations on the Provincial organization were slightly altered ; and this not later than June 25th, 1926, as a reference to the *Church Standard* for that date (pp. 6 and 9) indicates. The Draft Bill, which is printed as Appendix III of the *Official Report* of the Constitutional Convention, 1926 (pp. 31–54), is this modified form. There is no apparent difference in the external form of the two recensions ; they may be distinguished by the fact that the later form has a total of 96 clauses, whereas the earlier one has only 95.

the succeeding chapter will give an account of the passage of the Bill, through the Convention and Synod, and its reference back to the Dioceses.

VI. The Declarations (Chapter I)

These state the basis of the Church's faith. Section 2, which is the most important of all from the Constitutional standpoint, states, "The Church of England in Australia is a part of the Holy Catholic and Apostolic Church and is in communion with the Church of England in England, and this Church will not by its own act or will sever communion with the Church of England in England, nor with other national regional or provincial Churches maintaining communion with that Church." The remaining sections, all of which are highly important, enunciate in terms reminiscent of the Lambeth Quadrilateral of 1888 (reaffirmed in 1897) the fundamental beliefs of that Church.

In essence they assert her adherence to (*a*) the Nicene and Apostles' Creeds as the basis of faith (Section 3); (*b*) the scriptures of the Old and New Testaments (Section 4); (*c*) the Book of Common Prayer and the form and manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons in use in the Church of England in England (Section 5); (*d*) the Christian doctrine, sacraments, and orders (Section 6); the authority of Church to make canons, ordinances, and rules for the order and good government of this Church (Section 7).

The name of the Church is noteworthy. It is not "The Church of Australia," but "The Church of England in Australia." There is little doubt that the adoption of the former title would have been possible only by giving offence to other religious bodies in the Commonwealth. Moreover, those who feared the complete dissolution of the spiritual bond which binds the Australian Church to the Church in the Home Country would the more readily reconcile themselves to a designation of the Church which implied by its very name that it is part of the Church of England. On the value of the basis of faith—of its rigidity on the one hand, and its laxity on the other—volumes could be, and, to judge by past experience, will be, written. It proved to be one of the chief points of contention when the Convention actually assembled.

VII. Orders and Synods (Chapter II)

This chapter is devoted to what amounts to an assent to the existing conditions regarding Orders and Synods. After asserting the existence of the Orders of bishops, clergy, and laity, the first group including the Primate, the metropolitans, the diocesan bishops, and the coadjutor bishops, the Constitution proceeds to lay down rules for the election of the bishops. The Primate is to be elected in accordance with the canons of the General Synod, and the Metropolitan in accordance with the canons of the Provincial Synod, the diocesan in accordance with the canons of the Diocesan Synod. Section 13 deals especially with appointment of coadjutor and assistant bishops and their powers. Section 14 is important, since it echoes a controversy of nearly a century earlier.[1] "Nothing in the Constitution or in any canon, ordinance or rule of any Synod shall limit or affect the authorities powers, rights and duties conferred or imposed upon a bishop by virtue of his spiritual office as a bishop in the Holy Catholic and Apostolic Church, or confer or impose such authorities, powers, rights and duties upon any person who is not a bishop." It will be remembered that the great objection urged by Broughton, and especially Selwyn, against the terms of their Letters Patent was that these Letters claimed to be the source of spiritual, as well as jurisdictional, powers. In Section 17 express provision is made for the General Synod, and for Provincial and Diocesan Synods.

VIII. The General Synod (Chapter III)

This chapter is perhaps of the greatest significance. It is the attempt to give to the General Synod, at least in certain respects, *real* powers, and to give a place, if not supremacy, to what I have earlier termed the Catholic (as opposed to the Congregational) principle. In certain clearly defined spheres it is to be no longer necessary for the individual dioceses to give their assent to the Determinations of the General Synod. These will be binding on the dioceses which have assented to the new Constitution, whether or not they are favourable or otherwise to its canons. I will proceed now to a consideration of the details of this chapter of the Constitution, noting especially any differences from the General Synod Constitution, as it was in 1921.

The Synod is to be constituted exactly as at present—

[1] Cp. pp. 65–69.

two Houses, which sit together and vote together or by orders (Sections 18, 29). The method of representation, even in its smallest details, remained the same (Section 21 and Table Annexed). The Synod is to be held once in every three (not five) years. On the request of not less than half of the members of any one order of the General Synod, a *special* session must be called; though the Primate is no longer empowered to convoke such a special session on his own initiative (Section 29). The necessary quorum of at least 5 bishops and 15 clerical and 15 lay representatives remains the same as before (Section 28). Each lay representative has to sign a declaration of the following form:

"I, A.B., of . . . do hereby declare that I am a communicant of the Church of England in Australia,"—a new provision (Section 23).

The Synod is henceforth to be enabled to make *canons* for the order and good government of the Church with respect to—

(*a*) the election, authorities, powers, rights and duties of the primate;
(*b*) the confirmation of the election of bishops;
(*c*) the appointment of coadjutor bishops and assistant bishops;
(*d*) the consecration of bishops;
(*e*) the oaths, declarations and assents to be required of bishops, priests, deacons and lay officers;
(*f*) the standards of education and fitness to be attained by persons who desire to be admitted to holy orders or to the ministry of this Church;
(*g*) the promotion of sound learning and theological study among the clergy and laity, including the establishment, recognition and support of colleges and schools;
(*h*) the provision of superannuation and provident funds for clerical and lay officers;
(*i*) the ratification of any alteration of a province and of the constitution thereof;
(*j*) the ratification of the formation of a new province and of the constitution thereof;
(*k*) the ratification of the formation of a new diocese;
(*l*) the admission of any diocese, the territory of which is partly or wholly outside Australia, to the

general synod with the status rights powers and obligations of a diocese of this Church ;

(*m*) the promotion of the cause of home and foreign missions, including the establishment recognition and support of missions, the formation of missionary dioceses, the constitution thereof, and the appointment of bishops thereto ;

(*n*) the furtherance of union with other Christian communions ;

(*o*) the establishment, jurisdiction powers and procedure of tribunals for the trial and determination of charges for breaches of the faith, discipline or ceremonial of this Church or for offences against any canon, ordinance or rule of this Church ;

(*p*) matters directed or permitted by the Constitution to be prescribed by canon of the General Synod ;

(*q*) matters referred to the General Synod by any Diocesan Synod or Synods, but so that the canon shall extend only to the diocese of any synod which refers the matter or which afterwards adopts the canon ;

(*r*) matters incidental to the execution of any power vested by the Constitution in the General Synod or in either House thereof. (Section 30).

The most important *new* canons were those concerning the training of candidates for the ministry (*f*), religious education (*g*), and the provision of superannuation and provident funds (*h*) ; and the one on subjects referred to it by any Diocesan Synod or Synods (*q*).

The General Synod may also make *provisional canons*, " for the order and good government of the Church with respect to any matter, whether such matter is or is not mentioned in section 30 of the constitution." Such are not binding unless received by two-thirds of the Diocesan Synods (Section 31). The Synod may further " pass *resolutions* declaring the view of the Synod on any matter affecting this Church or affecting spiritual or moral welfare " (Section 34).

IX. Provinces and Provincial Synods (Chapter IV)

Provinces are to remain as at present. For the formation of new provinces, at least four dioceses are necessary, and

ratification by canon of the General Synod must ensue (Sections 44, 45).

The position and authority accorded to Provincial Synods in the new Constitution is only slight. Each such Synod, indeed, is to continue to exercise its existing functions except that we read in Section 50 that, " Where any ordinance, rule or resolution of a Provincial Synod is inconsistent with any canon of the General Synod, the ordinance, rule or resolution shall, to the extent of the inconsistency, be invalid."

It is quite clear from this regulation that to all intents and purposes the powers of the Provincial Synods are reduced to a vanishing point. It is only necessary to turn up the Provincial Constitution of Western Australia or Queensland to assure oneself of this fact. For, if the list of subjects on which these respective Synods may legislate be compared with those referred to in Section 30 of the Draft Constitution (given above), it will be seen that the whole of the former list recurs in the latter ; and, since by Section 50, the General Synod has the last word in such cases, the legislative powers of the Provincial Synod are practically nil.

It has therefore been proposed to allow for the creation of " Provincial Councils " instead of " Provincial Synods " in any provinces which may subsequently be created.[1] For such a course there is great justification. The multiplication of unnecessary synods involves invariably much waste of time and energies ; and especially in a country like Australia, where distances are great and the financial position of the Church is none too good, the expenses of travelling are inevitably a serious item. A Provincial Council would certainly meet the needs of the situation far better than a synod ; for where a body has what amounts to only advisory, as opposed to legislative powers, the more cumbrous it is the less likely is it to effect anything of value. The Provincial Synods as they exist at present are of recent growth, and have no traditions behind them ; that being so, the best course would undoubtedly be to abolish them altogether before they become invested with the authority of the new Constitution and the odour of sanctity which attaches to antiquity.

[1] Cp. *Church Standard*, June 25th, 1926, p. 619 ; and the remarks of Dr. P. A. Micklem at the Convention itself (*Church Standard*, October 22nd, 1926, p. 205) ; cp. p. 188.

X. Dioceses and Diocesan Synods (Chapter V)

At present (1927), the several diocesan constitutions lack any uniformity, except such as is the result of similar needs in the different dioceses. Chapter V is devoted to the attempt to give, in its main outlines, a common constitution to all the dioceses. But those responsible for the Draft Bill were only too conscious of the dangerous ground on which they were treading and, apart from a knowledge of the actual conditions in the Church in Australia, the provisions of the Bill show clearly that its constructors took all possible care to avoid giving offence. The amount of space devoted to the diocesan legislation is disproportionately large ; the very first section on the subject states, in a professedly constitutional document, that " a diocese thall *in accordance with the historic custom of the Holy Catholic and Apostolic Church* continue to be the unit of organization of this Church " (Section 51) ; and the dioceses are individually allowed the maximum of freedom compatible with the powers of the General Synod.

Diocesan legislation is to take the form of *Ordinances* (not *canons*), and Section 63 gives a list of eighteen subjects on which ordinances may be made " for the order and good government of (the) Church within the diocese." They are too long to quote here ; but they will be found in Section 63 of the Draft Bill. Moreover, the list is not intended,—as is the list in Section 30,—to be *exhaustive ;* for, in the recension of the Constitution referred to in the *Church Standard* for June 18th, 1926 (p. 607), we read : " The diocesan synod may make ordinances . . . *in particular* with reference to . . ." The diocese, in fact, has the right of legislation in all matters except such as concern the Church as a whole and not purely the individual diocese.

To the freedom which each diocese has in accepting or rejecting the whole new Constitution I shall return when discussing Chapter IX.

XI. Tribunals. (Chapter VI.)

As at present constituted, the Supreme Court of Appeal, both for the Church of England in England and the Church of England in Australia, is the Judicial Committee of the Privy Council. The unsatisfactory nature of this Court for the Church as it is in England has been long felt ; and the recently published Report of the Ecclesiastical Courts

Commission is a sufficient manifestation of this feeling. In a self-governing Australian Church such a state of affairs must be still more unsatisfactory. It is but natural, therefore, that there is need for a revision of the existing legislation in the new Constitution, and above all to provide that the highest Court of Appeal shall be an Australian, as opposed to an English, Court.

According to the Draft Bill, there is to be a series of tribunals for the trial of ecclesiastical offences. These will form a hierarchy, consisting of the diocesan, provincial and supreme tribunals. The determinations of the last-named will ordinarily be final, "but if the determination of the supreme tribunal is the unanimous determination of all the members thereof, the determination shall be final and conclusive, but if the determination is not the unanimous determination of all the members thereof, an appeal shall lie to the Consultative Committee of the Lambeth Conference, and the determination of that Committee shall be final and conclusive" (Section 76 (2)).

For the purpose of the trial of bishops, a special court is to be constituted, known as the *Special Tribunal* (Section 75), to "consist of such number of bishops not being less than 6 as may be prescribed by canon of the General Synod."

The sentences which such Courts can pronounce must necessarily be of a spiritual nature. "In the case of any charge, none of the tribunals shall pronounce any sentence other than monition, suspension or expulsion from office and rights and emoluments appertaining thereto, degradation from Holy Orders, or expulsion from this Church" (Section 77).

XII. The Property of the Church. (Chapter VII.)

This chapter is devoted to the possession of the Church's property by "a body corporate, to be known as the *corporate trustees* of the Church of England in Australia." All the dioceses which accept the new Constitution (cp. Chapter IX) are bound to adhere to the declarations of Chapter I of the Constitution; and if they cease to do so, their property will be liable to forfeiture, whether the offender be the individual parish or the whole diocese. And further, "the rights and privileges of any office-bearer of this church in respect of any property thereof in any diocese shall be conditional on his adherence to the declarations set forth in chapter one of the constitution except so far as any of the same is

altered in accordance with the constitution, and on breach of the condition he shall cease to be entitled to any such right or privilege" (Section 82 (3)).

XIII. Alteration of the Constitution. (Chapter VIII.)

The somewhat nebulous demand of the Australian Church for a revised Prayer Book is carefully provided for in the new Constitution. It is true that this is not the only change which could be made under the terms of this chapter, but it seems clear that it is this one which is primarily anticipated. "The solemn declarations set forth in chapter one of the constitution shall not be altered, provided that nothing in this section shall preclude the alteration of the Book of Common Prayer in accordance with the provisions of this chapter" (Section 84).

Extreme safeguards are taken against any precipitate course of action on this matter, even though recent experience in England shows that in the absence of any such safeguards revision is a tediously slow process. A Canon for the alteration of the Constitution is designated a "Constitutional Canon." But, in order for such a Canon to be passed the following stages are essential:

(*a*) The General Synod has to appoint a special commission to construct a Bill for the purpose.

(*b*) At least 6 months before the Bill is introduced into General Synod, a copy has to be sent to every diocesan.

(*c*) The Bishops have the power of amending the Bill at this stage, and to them is entrusted the initiative—the introduction of the Bill to General Synod.

(*d*) It has to pass General Synod.

(*e*) It is, however, deemed to be rejected, "unless two-thirds of the diocesan synods within 5 years, assent by ordinance to the Constituent Canon, and the synods so assenting contain a majority of the priests licensed to the Church." The last phrase, which does not occur in the form printed here, was added apparently to prevent undue weight being attached to the decisions of the smaller dioceses.[1]

(*f*) It returns to General Synod; and finally comes into force "if two-thirds of the members of the House of Bishops, two-thirds of the clerical representatives

[1] Cp. *Church Standard*, July 16th, 1926, p. 27.

voting and two-thirds of the lay representatives voting, approve the canon."

It is clear that only the minimum of opposition to any proposed Constituent Canon is necessary to block its passage at one or other of these stages.

XIV. Operation of the Constitution. (Chapter IX.)

The significance of the provisions of this, the last, Chapter, the events of the immediate future in the history of the Australian Church may reveal. Section 87 provides for the fixation of a day as from which the new Constitution shall come into effect.

But on what dioceses will it be binding? Not necessarily on all. Section 88 is sufficiently important and to be quoted in full.

"(1) The constitution shall apply to every diocese in Australia which by ordinance of the diocesan synod thereof agrees to the constitution, whether before or after the constitution takes effect, and to every diocese formed or admitted to the general synod under the constitution.

"(2) Where all the dioceses in any province so agree, the constitution shall apply to the province as well as to each diocese.

"(3) If any diocese in Australia does not by ordinance of the diocesan synod thereof agree to the constitution, the diocese shall nevertheless be entitled to continue in communion with this church, and may be associated with this church on such terms and conditions as may be agreed upon by ordinance of the diocesan synod of the diocese and by canon of the general synod."

It is thus free to any diocese to accept or reject the Constitution.

Section 92 is important, since it provides that the decisions of the Judicial Committee of the Privy Council shall cease to be binding on the Church in Australia. "No decision of the Judicial Committee of the Privy Council or of any other court in England on any question as to the faith, ceremonial or discipline of the Church of England in England shall be binding on this Church by reason only of the decision being binding on the Church of England in England."

XV. Summary

The foregoing account of the Draft Bill will serve to illustrate that the changes are of a much wider nature than the mere severance of the Legal Nexus. The very foundation of the Constitution of the Church in Australia is being revised, and its legislation is being put on a basis similar to that of the Church in other Colonies in the Empire. In Australia, however, the necessary legislation had been delayed for so long that at every point extreme caution was essential in order to secure general acceptance for the new Constitution. Addressing his Diocesan Synod, Dr. Long, the Bishop of Bathurst, said recently: "The Drafting of the Constitution was at least as difficult a task as the drafting of the Federal Constitution of Australia. . . . There was no clear norm to follow as a model, though toll was taken of every constitutional document in the Anglican Communion, and constant reference made to secular constitutions."[1] Even though from the mouth of the leading Bishop concerned with the drafting of the Bill, it not inadequately represents the difficulties with which any such compilers would have been faced.

[1] Quoted in *Church Standard*, June 11th, 1926.

CHAPTER XVI

THE CONSTITUTIONAL CONVENTION AND AFTER

I. Introductory

THE opposition which had been anticipated to the Bill proved to be a reality. Dr. Long, the Bishop of Bathurst, who, together with Professor Peden (as the Chancellor of the Diocese of Bathurst) had been mainly responsible for the construction of the Bill, worked with untiring energy and more than ordinary tact in order to secure its passage. The expressions of gratitude from the General Synod to these two men[1] were only their due. As the history of the passage of the Bill showed, the goal was never lost sight of. With a view to securing the acceptance of the Bill not merely by the necessary majority vote, but by the general consciousness of the Church, the framers of the Bill were prepared to go considerable lengths in urging modifications. And, if the modifications made in the Bill appear at times somewhat tolerant of the scruples of tender consciences, the fact that the Bill eventually passed unanimously was a more than adequate compensation.

II. The Opposition to the Bill

Opposition against the Bill was directed from all three points of view, Anglo-Catholic, Modernist and Protestant. Examples of these will be given in turn; the last-named, being the strongest, will be considered last.

i. *Anglo-Catholic.* The main objection urged by Anglo-Catholics was that not sufficient legislating powers were given to the Diocesan Synods. In spite of the great care taken by the Draft Bill to insist that the Diocesan unit was the custom of the "Holy Catholic and Apostolic Church," the opposition made itself felt. In a speech delivered at Sydney in July 1926[2] the Rev. J. Norman, after referring to

[1] Cp. *Church Standard*, October 29th, 1926, p. 220.
[2] *Ibid.*, August 6th, 1926, p. 65.

other objections against the Bill, is reported to have said: "The most serious changes, however, are those which concern the office of the Bishop.

Section 90[1] appears to safeguard that office from being prejudicially affected by these changes, but its scope is indefinite and it would be difficult to determine what rights are preserved. On the other hand, there are in the draft numerous explicit restrictions of the Catholic rights and privileges of the episcopate. The General Synod is to have power to regulate the confirmation of the elections of Bishops, their consecration, the oaths, declarations and assents to be made by the clergy, the standards of fitness of ordinands, the appointment of episcopal officers such as Archdeacons, Vicars-general and, more important still, to alter the rites, ceremonies and doctrines of the Church (within certain limits). The Church tribunals are even to be given power not only to declare the accused to be guilty, but also to pronounce sentence of excommunication and to expel from the Church! This is dangerously like abandoning the historic episcopacy and substituting a Presbyterianism mildly flavoured with episcopal nomenclature. At present we have a perfectly sound reply to Roman attacks on our Catholicity; it will probably require some ingenuity to construct a defence under the proposed Constitution."

ii. *Modernist.* A letter by Mr. K. T. Henderson in the *Church Standard* of October 1st, 1926, may be taken as typical. It is too long to quote in full, but the extracts which we give show that he opposed it on the grounds of (*a*) the fear that a majority vote would give no adequate place in the Church to the "intellectuals," and (*b*) the dislike of the specific recommendations—the so-called "Declarations"—which tie the Church to the present creeds. "It is evident," he writes, "that the currents of thought loosely called 'liberal' or 'modernist' are influencing the leaders of all parties. *Liberal Evangelism* and *Essays, Catholic and Critical,* bear plain evidence of the spirit of renaissance which is quickening and bracing our religious thought with the new sense of the glorious fruitfulness of free-thinking. Every thoughtful member of the present Convention must measure these movements with the doctrinal tests laid down as unalterable in the draft Australian Constitution. By

[1] A different recension of the Draft Bill from the one we print is intended.

this Constitution the Church in Australia takes from itself the right to alter its doctrinal tests even if the Church of England does so, and the abolition of the privy council and of any appeals to English tribunals may cut off our standards of orthodoxy from any reference to current English scholarship. Many of us have found to our deep sorrow and intense disappointment that scholarship in Australia is physically impossible. Where could be found an Australian tribunal competent to try a man who, regarding thought and research as part of his ministry, laboured so earnestly to do original work and to be entitled to individual opinions different from those generally received in his diocese ? "

iii. *Protestant.* Throughout the history of the Australian Church (as of the Church of England at home for over a century), there has been an alliance, resting rather on the concrete situation than on abstract principles, between Protestantism and Legalism. A measure which would give to a Church spiritual autonomy was therefore naturally opposed by Evangelicals. Moreover, the measure, in claiming some sort of restriction on diocesan freedom, necessarily had to give compensation to the smaller dioceses by full representation in the General Synod ; and this somewhat generous representation of these dioceses at the Synod meant that the more populous dioceses were (comparatively) less well represented. In Sydney this inadequate representation was particularly felt ; the " principles of the Reformation " were thought to be imperilled. At a Diocesan Synod held before the Convention sat, the Draft Bill was actually rejected, and an alternative Bill constructed, to be placed before the Convention.

The opposition of each of these three groups is to be traced back ultimately to the fact that each of the various Australian dioceses had, on the whole, a definite party colour. In the Sydney Diocese, for instance, clergy, as a condition of being licensed, have to sign a document stating that they will not wear Eucharistic vestments in that diocese until they are declared legal by the Archbishop ; and though we are unaware of any corresponding pledges being required in the Catholic dioceses, it is found *de facto* that these dioceses *do* remain distinctively Catholic. Any surrender of the rights of the dioceses, such as the Draft Bill laid down, would naturally lead to limitations of freedom in what a diocese would regard as important matters. Whether the moderates, who alone can give the necessary support in such

a case, are better designated "compromising indifferents" or "large-hearted tolerants" is a question not easily settled.

III. Episcopal Views of the Bill

The attitude of the Bishops to the Bill was equally at variance. The Archbishop of Sydney opposed it because he feared that it would divide the Church;[1] the Bishop of Bendigo supported it because he could not see how otherwise the unity of the Church could be preserved.[2] The Bishop of Bendigo[3] thought that it would have been better if the questions of Autonomy and Church Constitution had been made separate issues; this proposal seemed in the abstract highly reasonable, though perhaps supporters of the Draft Bill may be thankful that the possible dangers of such a course were averted. A number of small points of some interest were raised by the Bishop of Adelaide in a letter to the *Church Standard* of September 17th, 1926; among them, he thought that a change of the name of the Church should at least be a possibility. The Bishops of Wangaratta[4] and of Goulbourn[5] were among the warm supporters of the Bill. And throughout, as has already been mentioned, Bishop Long of Bathurst was unwavering in his attitude.

IV. The Constitutional Convention

The Convention opened on Tuesday, October 12th, 1926, with a Choral Eucharist. In the afternoon a notice that the Bill be received was proposed by the Bishop of Bathurst and seconded by Mr. P. C. Purbrick[6] of Wangaratta. The Sydney delegates proposed their alternative Bill, which was rejected—though by a motion of the following day their Bill was "laid upon the table as available for reference throughout the whole proceedings of the Convention." It was on the evening of October 13th that the Convention passed from generalities to the discussion of the clauses, one by one. These discussions continued until October 20th, when the Bill in its much amended form was finally accepted. I reserve for the next section the discussion of the "Declara-

[1] *Church Standard*, September 10th, 1926, p. 126.
[2] *Ibid.* [3] *Ibid.*
[4] *Ibid.*, August 20th, 1926.
[5] *Ibid.*, September 24th, 1926.
[6] At present (1928) Chancellor of the Diocese of Wangaratta.

tions"; the remaining chapters of the Bill will be treated here.[1]

The modifications made in chapters two and three were only of minor importance. Great stress was laid on the necessity of bishops' elections securing "confirmation." The Bishop of Goulburn insisted that "Confirmation (of Episcopal elections) was a reality in the Churches overseas and the Church at home was hoping that it would recover the same." An amendment of the Bishop of Bathurst to the effect that coadjutor-bishops should be admitted to the House of Bishops without the power of voting, was agreed to.[2] Much discussion centred round the question as to Diocesan representation at the General Synod; of the three possible methods of computation, namely: (i) the number of Church people in the diocese; (ii) the number of clergy working in the diocese; and (iii) the number of parishes or cures in the diocese, it was ultimately decided to adhere to (ii); the basis of representation as proposed by a select committee, was one representative of each order for every fifteen licensed clergymen resident in the diocese.[3] It was agreed, on the motion of a layman (Mr. W. J. G. Mann), with the assent of the Bishop of Bathurst, that the clause requiring a declaration as to communicant membership be omitted.[4] On the vote of a small majority (78 against 65) it was determined to hold the General Synod every *three* years.[5]

Of more importance was the reconstruction—partly by the incorporation of details from the Sydney delegates' alternative Bill—of the powers of the General Synod. In certain matters of importance, the General Synod had "prevailing powers" in other matters the diocese had "prevailing powers." In all essential points uniformity was preserved. Among the absolute powers vested in the General Synod were those relating to the consecration of bishops; the oaths, etc., required of bishops, priests, and deacons; reunion; property belonging to the General Synod, matters prescribed elsewhere in the Constitution; matters referred

[1] For these remarks, I am partly dependent on information contained in the current *Church Standards*. The *Official Report* (Sydney, 1927) contains the most important documents. A full account of this historic Convention yet remains to be written.

[2] *Amended Draft Bill*, Section 13. I shall refer to the Draft Bill as actually passed as the *Amended Draft Bill*. It is Document W.

[3] *Ibid.* Section 14 (1) and First Table annexed.

[4] *Original Draft Bill*, Section 23 (2).

[5] *Amended Draft Bill*, Section 24 (1).

to the General Synod by individual dioceses; and matters incidental to the execution of any power of the General Synod.[1] Comparison of these powers with those prescribed in the original Draft Bill will reveal to what a considerable extent the proposed powers of the General Synod were modified.

Considerable opposition was felt to the continuance of Provincial Synods. Archdeacon Whitington of Tasmania maintained that Provincial Synods in Australia had not been a success; the Bishop of Bathurst agreed, and referred to the history of the English Church, showing that the creation of the two Provinces of Canterbury and York had greatly weakened the Church's unity. The support of Dr. Micklem was also accorded to the proposal to abolish them. These objections proved, however, unsuccessful. A further resolution to substitute the designation "Provincial Council" instead of "Provincial Synod" was also lost.

The limitation of the powers of the General Synod necessarily went hand in hand with an increase in the power of the Diocesan Synods. Bishop Long and Professor Peden accordingly had to be called to re-draft the chapter dealing with Diocesan Synods. The constitutions of existing dioceses were to continue until altered in accordance with the new Constitution;[2] an optional specimen form of Constitution for new dioceses was attached to the schedule of the Bill.[3]

The discussion on the constitution of tribunals did little more than reflect the same question, that as to the powers of individual Diocesan Synods. After much discussion it was decided to permit a diocese to constitute the Provincial Tribunal its Diocesan Tribunal if it so desired; yet it retained the right to withdraw at a later date if it wished.[4] The constitution of the Supreme Tribunal was fixed as follows. A president (a bishop of a diocese) elected by the whole General Synod voting together, three bishops or priests of fifteen years' standing and three laymen, who must be judges of the High Court or a Supreme Court or a practising barrister or solicitor of ten years' standing. These six members are to be elected—one bishop or priest and one layman by the House of Bishops, one each by the clergy and one each by the lay representatives.[5]

[1] *Amended Draft Bill*, Section 20 (1).
[2] *Ibid.*, Section 40.
[3] *Ibid.*, Second Table Annexed.
[4] *Ibid.*, Section 46 (1).
[5] *Ibid.*, Section 48 (1).

The thorny point as to the validity of the Judici mittee of the Privy Council's judgments described Archbishop of Brisbane as a matter of conscience part of possibly five-sixths of the Convention—cam next for discussion. The Bishop of Bathurst insisted the Church could not continue to be bound by these decisio such decisions, he believed, were but "persuasive precedents." A proposal was made by the Dean of Sydney to allow the Privy Council to be superseded by the Supreme Tribunal. It was finally decided that "no decision of the Judicial Committee of the Privy Council or of any other court in England on any question as to the faith, ritual, ceremonial, or discipline of the Church of England in England shall bind any court or tribunal on any question as to faith, ritual, ceremonial, or discipline of this Church, but (that) nothing in this section shall preclude any such decision from being cited to any court or tribunal as a persuasive precedent."[1]

As regards Prayer Book revision, it was provided that the General Synod may by canon permit the use of an alternative form of the Book of Common Prayer which secured authority in England.[2]

V. The Declarations

It remains to consider the Declarations.[3] The feeling that these declarations might imply a change of doctrine led to their being discussed and reformulated with the greatest care.

Archdeacon Whitington sounded a good note when he said that "the less definition of doctrine in the Bill the better it would be. We should simply assume our relation to the Catholic Church. Otherwise we shall give colour to the idea that we are founding a new Church. Let the Bill be confined to administrative matters"; and words to the same effect were uttered by Dean Talbot of Sydney.[4] Yet the necessity of some safeguards was strongly felt. The Archbishop of Brisbane pointed out that if Churchmen had always been so opposed to them, we should never have acquired our Nicene Creed.[5]

As the outcome of lengthy and at times acrimonious

[1] *Ibid.* [2] *Ibid.*, Section 54 (1).
[3] *Ibid.*, Chapter I (Sections 1–6).
[4] *Church Standard*, October 22nd, 1926, p. 204. [5] *Ibid*

ions, the declarations received finally a much modified must be admitted from all points of view, a much ved form. The change made in the second declaration oteworthy. This declaration deals with the vital ques- of the intercommunion of the Church of England in ustralia with the other branches of the Anglican Church. Whereas the original form had assented that the Church in Australia " will not by its own act or will sever such communion," the revised form ran : " the Church of England in Australia being a part of the one Holy Catholic and Apostolic Church, and in communion with the Church of England in England, will ever remain and be in communion with the Church of England in England, and with national, regional, or provincial churches maintaining communion with that Church, so long as communion is consistent with the solemn Declarations set forth in this chapter."[1]

On the motion of the Bishop of Adelaide, the lost " note " of the Church was restored and " one " was inserted before " Holy, Catholic, and Apostolic." The Church wisely determined not to make its form of the administration of the Sacraments necessarily identical with that of the Church of England in England. Thus Declaration V reads : " This Church will ever obey the command of Christ, teach His doctrine and administer His Sacraments of Holy Baptism and Holy Communion, follow and uphold His discipline and preserve the three orders of bishops, priests, and deacons in the sacred ministry." The sixth and last declaration, as finally revised, allowed the possibility of Prayer Book revision, provided no change in doctrine was intended : " This Church doth retain and approve the Book of Common Prayer and the doctrine and principles contained therein, and will not in any revision of the Book of Common Prayer or otherwise make or permit any alteration which would change the character of this Church as shown by its assent."

VI. The Passage of the Draft Bill

On October 21st the Bill passed the Convention ; and the General Synod held immediately afterwards likewise gave to it its assent. The Bill was then referred back to the dioceses, which are now individually considering it in their Diocesan Synods. When eighteen of the twenty-five Australian Dioceses (including the two metropolitan

[1] Document W, p. 280.

dioceses) had given their assent, the necessary legislative powers could be sought from the various State Parliaments.

Among the first dioceses to assent were Perth and Adelaide.[1] Eighteen of the dioceses had accepted it by October 21st, 1927;[2] twenty by December 23rd, 1927.[3] Shortly before the last-named date, the Tasmanian Parliament passed an Act in accordance with the provisions of the new Constitution.[4]

VII. The Reception of the Constitution at Sydney

It was feared from the outset that the fiercest opposition which the Constitution would have to face would be from the Diocese of Sydney, which not unnaturally disliked the surrender of its ancient privileges which the new Constitution entailed. These fears proved to be far from groundless. At an early stage the Sydney Synod appointed a Standing Committee to deal with the proposed Constitution. Before the meeting of the Synod in the middle of March, 1928, a Report on the situation was issued by this Committee.[5] It was clear from this Report that the Church in Sydney feared that the new Constitution imperilled the essentially Protestant character of the Church of England. In its very first sections, it urged that the Reformation settlement was in danger.[6] "The Reformed character of the Church of England hitherto has been secured by the Prayer Book and the Thirty-nine Articles and the decisions of the Privy Council and other civil courts in England upon the interpretation of the Reformation instruments."[7] But this is no longer sufficiently guaranteed. "It is significant," so the Report insists, "that it is only in (one) clause that any reference is made to the Thirty-nine Articles."[8] Since the necessary safeguards for the maintaining of the Protestant character of the Anglican Church are absent from the proposed Constitution, it is imperative that great caution should be exercised before it is adopted. The Report urges "the most careful

[1] Cp. *Church Standard*, December 17th, 1926, and March 4th, 1927.
[2] Cp. *Ibid.*, October 21st, 1927, p. 199.
[3] Cp. *Ibid.*, December 23rd, 1927, p. 331.
[4] *Ibid.*
[5] I have not yet been able to secure this Report. I am dependent on comments in the *Church Standard*, *passim*, for my information.
[6] *Church Standard*, February 17th, 1928, p. 422.
[7] *Ibid.*, March 9th, 1928, p. 458.
[8] *Ibid.*, March 2nd, 1928, p. 446.

consideration before the Diocese surrenders to another body, powers which it now possesses."[1] Even the Constitution itself is subject to considerable modification on the part of General Synod. " General Synod has power without the approval of the Diocese to alter two-thirds of the clauses in the Constitution."[2]

This Report was laid before the March (1928) Synod of the Sydney Diocese. It was agreed that the Constitution could not be accepted without qualifications. There were, indeed, some members of the Sydney Diocese who wanted to give unqualified assent to it, among them Mr. Clunies Ross. " From the standpoint of Australia, Sydney was only a part, and should do nothing to hold up the inauguration of the Constitution ; all alterations such as those submitted by Sydney could be made by constituent canon at the first meeting of the new General Synod." In these sentiments, Mr. Ross was supported by Archdeacon Boyce.[3] But the Protestant apprehensions were quite strong enough to outweigh the supporters of the convention. Mr. Mann voiced a fear that at some future date the Church in Australia might be named " the Anglo-Catholic Church of Australia."[4] A speaker who suggested that the day might come when " we may unite with the Roman Catholic Church " was called to order for his audacity.[5]

It was clear that the assent which the Sydney Synod could give to the Constitution was limited in character. Three important modifications were effected.

i. Additional declarations on the character of the Church of England were made.

ii. The number of provisions which were capable of alteration only with the consent of the dioceses was increased (i.e. the number of provisions which were directly brought under Section 57 of the Constitution). These included Sections 7, 14, 21 (2) ; the last paragraph of Section 21 (3) ; Sections 37, 40, 43, 44, and 58.

[1] *Church Standard*, February 24th, 1928, p. 434.
[2] *Ibid.*, p. 434. The writer in the *Church Standard* (p. 435) points out that " the 19 clauses which cannot be altered against the will of a diocese contain everything touching on fundamentals, faith, property, tribunals, unconditional powers, the Prayer Book, and decisions of the Privy Council."
[3] *Ibid.*, March 30th, 1928, p. 503.
[4] *Ibid.* [5] *Ibid.*

iii. In the case of the Diocese of Sydney, there was to be no longer the right of appeal from the Diocesan to the Supreme Tribunal.

It was pointed out that all these changes could be effected without any alteration in the text of the Constitution (which had by the date of this Sydney Synod received the acceptance of the greater number of dioceses). All that was necessary was that each State, in presenting the Bill for the legalising of the new Constitution, should urge the incorporation of these modifications in its Act of Parliament, and the resolution proposed, in consequence, that the Parliament of New South Wales and of four other States should pass such legislation.[1]

Of the modifications the last, which was introduced by Mr. Minton Taylor,[2] is the most important. It is evidently of a highly unsatisfactory character. Mr. Purbrick has pointed out[3] that it creates the anomalous situation that a bishop and a priest of the Diocese of Sydney, if tried for (say) the same heresy, would be judged by different courts, and it is quite conceivable that the two verdicts should be at variance. Yet Bishop Long recognized that the compromise was the only means of securing the assent of the Diocese of Sydney to the new Constitution, and consequently gave the proposal his support.

Naturally, the other dioceses turned none too favourable an eye on the Sydney demands. Riverina, for example, passed the following resolution:

"While this Synod deeply regrets the proposed inclusion in the Enabling Bill of certain limitations to the Constitution, especially that dealing with the Supreme Tribunal, as being contrary to every principle of justice and equity, it nevertheless leaves the ultimate decision of accepting or rejecting the proposed terms of the Enabling Bill to the Diocesan Council.

The Synod earnestly desires the peace and unity of the Church, but is of the opinion that this will best be obtained by the Diocese of Sydney deleting voluntarily the sections dealing with appeals to the Supreme Tribunal, before the Enabling Bill is presented to Parliament."[4]

[1] *Ibid.*, March 23rd, 1928, p. 485. The reason why only four such Parliaments need pass the legislation was presumably to exclude the necessity for a new Bill in Tasmania, which had already given Parliamentary assent to the Constitution. Cp. above, p. 191.

[2] *Ibid.*, March 30th, 1928.

[3] *Ibid.*, May 18th, 1928, p. 584.

[4] *Ibid.*, May 4th, 1928 p. 566.

This is typical of the reception of the proposals. Among those dioceses which have accepted them may be mentioned, Bathurst, Gippsland, and Perth. Tasmania appears to be alone in having rejected them.[1]

[1] *Church Standard*, May 4th, 1928, p. 566; May 11th, 1928, pp. 572, 579; June 8th, 1928, p. 625.

DOCUMENT A

THE FIRST CHAPLAIN'S, i.e., REV. R. JOHNSON'S COMMISSION.

(*Historical Records of New South Wales.* Volume I, Part II, p. 27.)

George the Third (etc.) to our trusty and well-beloved Richard Johnson, clerk, greeting—

We do by these presents constitute and appoint you to be Chaplain to the settlement within our territory called New South Wales. You are, therefore, carefully and diligently to discharge the duty of chaplain, by doing and performing all and all manner of things thereunto belonging ; and you are to observe and follow such orders and directions from time to time as you shall receive from our Governor of our said territory for the time being or any other your superior officer, according to the rules and discipline of war.

Given at our Court at St. James's, the twenty-fourth day of October 1786, in the twenty-sixth year of our reign.

By His Majesty's command,

SYDNEY.

DOCUMENT B

LETTERS PATENT ADDING THE WHOLE OF THE TERRITORIES WITHIN THE LIMITS OF THE CHARTER OF THE UNITED COMPANY OF MERCHANTS OF ENGLAND TRADING TO THE EAST INDIES TO THE SEE OF CALCUTTA.

Patent Roll No. 4256, George IV. Part V. No. 10.

REGINALD HEBER, D.D., BISHOP OF CALCUTTA.

George the fourth by the Grace of God of the United Kingdom of Great Britain and Ireland King Defender of the faith to all to whom these presents shall come greeting. Whereas His late Majesty our Royal father King George the Third did by Letters Patent under the Great Seal of our United Kingdom of Great Britain and Ireland bearing date the second day of May in the fifty fourth year of his Reign erect found and constitute our Territories under the Government of the United Company of Merchants of England Trading to the East Indies to be a Bishop's See and to be called from henceforth the Bishoprick of Calcutta and to his successors Bishops of Calcutta. And his said late Majesty by the same Letters Patent did give and grant to Thomas Fanshaw Middleton the first Bishop of Calcutta full power and

authority to perform all the functions peculiar and appropriate to the office of a Bishop within the limits of the said See but not elsewhere and also by himself or themselves or by his or their Commissary or Commissaries to exercise jurisdiction spiritual and ecclesiastical in and throughout the said See and Diocese according to the Ecclesiastical laws of our Realm of England which are lawfully made and received in England in the several causes and matters therein expressed and specified and no other and his said late Majesty by the same Letters Patent did make a further declaration concerning the special causes and matters in whicñ he would that the aforesaid jurisdiction should be exercised and did give and grant to the aforesaid Bishop and his Successors certain powers and authorities for the due performance of his and their episcopal functions subject however to certain limitations and reservations as on reference to the said Letters Patent will more fully appear. And for a further accomplishment of his intention and for aiding the said Bishop of Calcutta according to the laws and customs of the United Church of England and Ireland in the due and canonical superintendence of Ecclesiastical persons and affairs his said late Majesty by the said Letters Patent did erect and found and constitute one Archdeaconry in and over the presidency of Fort William in Bengal to be styled the Archdeaconry of Calcutta and one other Archdeaconry in and over the presidency of Fort Saint George on the Coast of Coromandel to be styled the Archdeaconry of Madras and also one other Archdeaconry in and over the presidency and Island of Bombay on the coast of Malabar to be styled the Archdeaconry of Bombay all such archdeaconries to be subject and subordinate to the said Bishop's See of Calcutta and whereas his said late Majesty did by Letters Patent under the Great Seal of our United Kingdom bearing date the 15th day of August in the 57th year of his Reign erect found and constitute one other Archdeaconry within the British Territory in the East Indies (that is to say) at Colombo in Island of Ceylon to be styled the Archdeaconry of Colombo such Archdeaconry to be also subject during the Royal pleasure to the jurisdiction spiritual and ecclesiastical of the Bishop of Calcutta for the time being and whereas his said late Majesty by other Letters Patent under the Great Seal of our United Kingdom bearing date the 15th day of August in the fifty seventh year of his Reign in order to give full effect to his Royal intention in respect of the said Archdeaconry of Colombo and for removing all doubts touching the jurisdiction of the Bishop of Calcutta and his Successors over the said Archdeacon and Archdeaconry did give and grant to the Bishop of Calcutta and his Successor all and singular the rights powers authorities functions and jurisdictions in and over the said Archdeaconry and Archdeacon of Colombo which he and they might lawfully exercise in and over the three Archdeaconries of Calcutta Madras and Bombay except the right of collating to the said Archdeaconry of Colombo.

And whereas by the demise of the said Thomas Fanshaw Middleton the late Bishop the said See or Bishoprick of Calcutta has become and is now vacant and it is our royal will and pleasure to appoint a Successor thereto. And whereas the doctrine and discipline of the United Church of England and Ireland are professed and observed by a considerable part of our loving subjects

resident in certain other parts of our Territories within the Limits of the Charter of the said United Company of Merchants of England trading to the East Indies not heretofore included in the said See and Diocese of Calcutta. And whereas no provision has been made for the supply of persons duly ordained to officiate as Ministers of the United Church of England and Ireland within such parts and there is no competent authority for the care and direction of Ecclesiastical affairs and our aforesaid Subjects are deprived of some offices prescribed by the Liturgy and usage of the Church aforesaid by reason that there is no Bishop residing or exercising jurisdiction and canonical functions in and over the same for remedying of the aforesaid inconveniences and defects it has become expedient and it is our will and pleasure that the See and Diocese of the Bishop of Calcutta shall be extended over the whole of our Territories within the Limits of the Charter of the said United Company of Merchants of England trading to the East Indies.

Now know ye that in order to give full effect to our royal will and pleasure of appointing a Successor to the said Bishoprick of Calcutta now vacant and of extending the limits of the said See or Bishoprick as aforesaid we having great confidence in the learning morals probity and prudence of our well beloved Reginald Heber Doctor in Divinity do name and appoint him to be Bishop of the said See and Diocese of Calcutta so that the said Reginald Heber shall be and be taken to be Bishop of the Bishop's See and Diocese of Calcutta and may by virtue of this our nomination and appointment enter into and possess the said Bishop's See as the Bishop thereof without any let or impediment of us our heirs or successors subject nevertheless to the powers of revocation and to the Rights of Resignation expressed and contained in the said Letters Patent of the second day of May in the fifty fourth year of the reign of his late majesty King George the Third. And we do hereby signify to the Most Reverend Father in God Charles Lord Archbishop of Canterbury, Primate of all England and Metropolitan that we have named and preferred the said Reginald Heber to the said Bishoprick of Calcutta and have appointed him Bishop and ordinary Pastor thereof requiring him by the faith and love whereby he is bound unto us commanding him to consecrate the aforesaid Reginald Heber Bishop of Calcutta in manner accustomed and diligently to do and perform all other things appertaining to his office in this behalf with effect we do by these presents ordain and declare our Royal will and pleasure that from henceforth the whole of our Territories within the limits of the Charter of the United Company of Merchants of England trading to the East Indies shall form and constitute the See and Diocese of Calcutta and we have given and granted and do by these presents give and grant to the said Bishop of Calcutta and his successors during our pleasure the right of appointing any person or persons to be his or their Commissary or Commissaries within any of the Territories and parts aforesaid which Commissary or Commissaries shall or may act in all matters relating to the Episcopal jurisdiction and functions of the said Bishop and his successors according to the duty of a Commissary by the Ecclesiastical Laws of England and we have further given and granted and do by these presents give and grant to the said Bishop of Calcutta and his successors during our pleasure all and singular the rights powers

authorities functions and jurisdictions in and over all and every our Territories within the limits of the Charter of the said United Company of Merchants of England trading to the East Indies which he and they may lawfully exercise in and over the territories under the Government of the said United Company by virtue of the said Letters Patent of the second day of May in the fifty fourth year of the reign of His late Majesty King George the Third or in and over our Territories in the Island of Ceylon by virtue of the said first recited Letters Patent of the fifteenth day of August in the fifty seventh year of his said late Majesty's Reign and the said last recited Letters Patent of the fifteenth day of August in the fifty seventh year of his said late Majesty's Reign or either of them subject always to the several limitations reservations and provisions which in the same several Letters Patent are fully set forth and we will that all causes matters and things contained in the said several Letters Patent shall so far as the same are applicable be applied to the jurisdiction and functions of the Bishop of Calcutta in regard to all and every the Territories hereby added to his Diocese as if the same were herein inserted word for word. In witness etc. witness etc. the twenty seventh day of May in the fourth year of our Reign,

By Writ of Privy Seal.

DOCUMENT C

LETTERS PATENT CONSTITUTING THOMAS HOBBES SCOTT ARCHDEACON IN NEW SOUTH WALES.

Patent Roll No. 4275, George IV. Part IX. No. 2.

George the Fourth by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith. To all to whom these presents shall come Greeting, whereas the doctrine and discipline of the United Church of England and Ireland are professed and observed by a considerable part of our loving subjects resident within our colony, or settlement of New South Wales and its Dependencies including Van Diemans Land, And whereas it is expedient to make further provision for the due regulation and order of persons duly ordained to officiate as Ministers of the United Church of England and Ireland, within the same colony or settlement. We have determined to constitute within the said colony or settlement one Archdeaconry subject during our pleasure to the Jurisdiction spiritual and Ecclesiastical of the Bishop of Calcutta for the time being, and we do hereby erect found and constitute one Archdeaconry in and over the British Territories within the said colony of New South Wales and its Dependencies, to be styled the Archdeaconry of New South Wales and to be subject and subordinate during our pleasure to the Bishop of Calcutta and his successors as aforesaid according to the Ecclesiastical Laws of this Realm, and to the end that this our intention may be carried into due effect, we having full confidence in the piety, learning, morals, probity and prudence of our well beloved Thomas Hobbes Scott, Clerk, do name and appoint him the said Thomas Hobbes Scott to be Archdeacon of the Archdeaconry of New South Wales as afore-

said so that the said Thomas Hobbes Scott shall be and be taken to be in all things Archdeacon of the said Archdeaconry of New South Wales, and by virtue of this our nomination alone enter into and fully and absolutely possess and enjoy the said office of Archdeacon within the said Archdeaconry, subject to the powers of revocation and resignation hereinafter more particularly expressed. And we do hereby signify to our Right Trusty and well beloved The Right Reverend Father in God the Lord Bishop of Calcutta that we have nominated the said Thomas Hobbes Scott so to be Archdeacon of New South Wales, and to be subject and subordinate during our pleasure to him and his successors as aforesaid. And for a declaration of our Royal will and pleasure in regard to the duties and functions to be exercised by the said Archdeacon and his successors. We do hereby declare that the said Archdeacon shall be within the said Archdeaconry assisting to the Bishop of Calcutta in the exercise of his Episcopal Jurisdiction and Function according to the duty of an Archdeacon by the Ecclesiastical Laws of our Realm of England—and in as full and ample manner as the same are or may be lawfully exercised by any Archdeacon within our Realm of England save as hereinafter excepted. And we do further will, ordain, and declare that the said Archdeacon shall, within his Archdeaconry, be and be taken to be without further appointment the Commissary of the said Bishop and his Successors and shall exercise Jurisdiction in all matters as aforesaid, according to the duty and function of a Commissary by the said Ecclesiastical Laws. And we do further direct that during the vacancy of the said Archdeaconry or until the person who shall be appointed by us to fill the same shall arrive and take on him the duties of the said office and certify the same in writing to the Governor of our said colony or settlement, the said duties shall be performed by some discreet Minister in Priests Orders of the Church of England who shall be nominated for that purpose by our Governor for the time being of the said Colony or Settlement of New South Wales. And, moreover, we command and by these presents for us our heirs and successors strictly enjoin all and singular our Governors, Judges and Justices, and all and singular Chaplains Ministers and other our subjects within the territories aforesaid that they and every of them be in and by all lawful ways and means aiding and assisting to the said Archdeacon and his Successors in the execution of the premises in all things. And we do further will and direct that the said Archdeacon and his successors may and shall from time to time appoint a proper and sufficient person in the said Archdeaconry to act as Registrar thereof and in case of no Registrar being so appointed, or the Registrar being unable to act during any vacancy of the said Archdeaconry, we will and direct that the person officiating as such as above directed may appoint any sufficient actuary to do all acts and things to the said office of Registrar appertaining. And we do further ordain that the Supreme Court of Jurisdiction in New South Wales shall have such and the like Jurisdiction and power of interfering by writ of prohibition or mandamus subject to the same laws, restrictions and rules of practice as is or has been exercised by our Court of Kings Bench at Westminster in regard to proceedings in the Ecclesiastical Courts of England regard being had nevertheless to any special provisions or exceptions contained in

these our Letters Patent or to any other laws and regulations specially applicable to or concerning our Colony or Settlement of New South Wales as aforesaid. Moreover, it is our Royal will, and we do hereby declare and ordain that nothing herein contained shall extend or be construed to extend to repeal vary or alter the provisions of our Charter whereby Ecclesiastical Jurisdiction was given to the said Court of Jurisdiction so far as the same does not relate to the correction of clerks or the spiritual superintendence of Ecclesiastical persons or to give to the said Archdeacon or his Successors any authority or Jurisdiction whatsoever in causes testamentary or matrimonial or in matters now cognisable in the said court, except as herein last before excepted. Moreover, we will and grant by these presents that the said *Archdeacon be a body corporate* and do ordain make and constitute him to be a perpetual Corporation and to have perpetual succession. And that he and his successors be for ever hereafter called and known by the name of Archdeacon of New South Wales. And that he and his successors by the name aforesaid shall be able and capable in the Law and have full power to purchase have, take, hold and enjoy such Manors, Messuages, Lands, Rents, Tenements, Annuities, and Hereditaments of what nature or kind so ever in fee and in perpetuity or for term of life or years as by grant or licence from our said Governor he or they shall at any time be authorised to take hold or enjoy within our Territories in the said Island or Settlement and all manner of goods, chattels and things personal whatsoever of what nature or value so ever and that he and his successors by and under the said name may prosecute, claim plead and be impleaded, defend and be defended, answer and be answered in all manner of courts of us our heirs and successors and elsewhere in and upon all singular causes, actions, suits, writs and demands real and personal and mixed as well Temporal and Spiritual and in all other things causes and matters whatsoever. And we do hereby declare that if we our heirs or successors shall think fit to revoke or recall the appointment of the said Archdeacon or his Successors for the time being and shall declare such our or their pleasure by Letters Patent under the Great Seal of the United Kingdom, then every such Archdeacon shall from and after the notification thereof in such manner as in the said Letters Patent shall from time to time be directed to the said Archdeacon to all intents and purposes cease to be Archdeacon as aforesaid And for removing doubts with respect to the validity of resignation of the said Office of the said Archdeacon it is our further will and pleasure that if the said Archdeacon or his Successors shall by Instrument under his Hand and Seal delivered to us or to the Governor of our said colony or settlement for the time being and duly accepted and registered resign the office of Archdeacon aforesaid such Archdeacon shall forthwith cease to be Archdeacon to all intents and purposes, but without prejudice to any responsibility to which he may be liable in Law or Equity in respect of his conduct in his office. And further to and that all things aforesaid may be firmly holden and done, we will and grant to the aforesaid Thomas Hobbes Scott that he shall have our Letters Patent under our Great Seal of our United Kingdom duly made and Sealed In Witness this second day of October 1824.

By the King.

DOCUMENT D

LETTER OF EARL BATHURST TO SIR THOMAS BRISBANE, GOVERNOR OF N.S.W.

(*Historical Records of Australia, Series I*, Vol. XI, pp. 419–422.)

Dispatch No. 47, per Ship *Hercules*.

Downing Street,
21st December, 1824.

Sir,—His Majesty, having been pleased to erect an Archdeaconry in the Colony of New South Wales by Letters Patent, bearing date the second day of October 1824, has been pleased to nominate the Rev. Thomas Hobbes Scott to be the first Archdeacon. Mr. Scott will proceed by my direction to take upon himself the duties of his Office.

2nd. The Duties of an Archdeacon are in a great measure defined by the Letters Patent under which he has been appointed, and, where they are silent, the Canons and Ecclesiastical Law of the Church of England will furnish the rules by which his conduct will be guided.

But in order to promote, as far as possible, the effectual accomplishment of those important purposes with a view to which this appointment has been made, I take this opportunity of communicating to you His Majesty's pleasure upon some of the more material questions which may be expected to arise respecting the duties of the Archdeacon.

3rd. Mr. Scott will report his arrival to you as soon as possible after he has reached the Colony ; and you will cause a Proclamation to be issued in His Majesty's name for making known to all His Majesty's subjects in the Colony the erection of the new Archdeaconry, and the appointment of the Rev. Mr. Scott as the first Archdeacon, and requiring all the Clergy of the Established Church and other of his Majesty's subjects to yield all due Canonical obedience to the Archdeacon.

4th. It will be one of the earliest duties of the Archdeacon to exercise, in His Majesty's behalf, the power of Visitor of all Schools maintained throughout the Colony by His Majesty's revenue ; and he will transmit to you his report of such circumstances connected with those establishments as he may think necessary to bring under your consideration, or to transmit through you to this Department.

5th. The Archdeacon will also enter, with all convenient dispatch, upon the performance of the important office of making a public visitation of all the Churches throughout the Colony, including the Settlement of Van Diemen's Land. The various Chaplains in the Colony, and all Church Wardens, Officiating Clerks, and other persons connected with the celebration of Divine Worship, or with the service and care of ecclesiastical edifices, will understand that they are bound to attend the Archdeacon's Visitation, and to render to him such information as he may require from them connected with the spiritual or secular concerns of the Church.

This Visitation will be annually repeated. The periods for making it will be fixed by the Archdeacon, who will, however, communicate with you before he notifies to the Clergy his intention of holding such visitations. You will, of course, afford him every degree of assistance and co-operation which it may be in your power to render.

6th. The distance of Van Diemen's Land from Sydney rendering it impossible that the Archdeacon should, in his own person, maintain an habitual inspection of the concerns of the Church throughout the whole of his Archdeaconry, he will appoint a proper person to officiate as rural Dean in Van Diemen's Land during his absence from that Settlement; and you will make that appointment known to the Lieut. Governor of the Island.

7th. In the execution of his office, and especially of the ecclesiastical jurisdiction vested in him by his Patent, questions of a legal nature may arise, upon which it may be desirable that the Archdeacon should receive the opinion and advice of one or both of His Majesty's Law Officers in the Colony. You will therefore transmit officially to the Attorney-General, or in cases of special importance both to thç Attorney and Solicitor-General, for their opinion and advice on any questions of a legal nature which the Archdeacon may desire you to propose to them in reference to his official duties.

8th. In the event of its becoming necessary that the Archdeacon should exercise the ecclesiastical jurisdiction with which he is invested, you will signify to the Attorney-General of the Colony, or, if for any reason he should be unable to act, then to the Solicitor-General, that it is His Majesty's pleasure that he should act as Assessor of the Archdeacon's Court, for the purpose of assisting the Archdeacon's judgment upon any questions of law which may arise in the course of any judicial process depending before him.

9th. Upon the arrival of any Chaplains in the Colony, by virtue of any appointment made subsequent to the date of the Archdeacon's Patent, such Chaplain will, in the first instance, report his arrival to you; it will then become your duty to refer him to the Archdeacon, who, with all convenient expedition, will signify to you in writing his opinion on what particular station such Chaplain may be most advantageously placed; and you will accordingly, in deference to the judgment of the Archdeacon, appoint such Chaplain to officiate in the place which may be so recommended to you.

10th. It will further be the duty of the Archdeacon to regulate, in reference to the Canons of the Church of England, the times at which Divine Service shall be performed in each of the Churches, Chapels and Public Establishments of the Colony; and he will be authorised to admonish the Clergy respecting the particular seasons at which they are to perform the various Ordinances contained in the Book of Common Prayer.

11th. All the inferior officers connected with the ecclesiastical establishment throughout the Colony, such as Vergers, Clerks, Sextons and Bell Ringers, will be nominated by the officiating Minister of the Church or Chapel to which they may be attached. Every such nomination will be reported by such Minister to the Archdeacon for his approbation, and, unless the Archdeacon should see good cause to disallow any such appointment, he will approve

and confirm it; and thereupon the person so appointed will be considered as invested with his Office, though subject to be removed by the Archdeacon for any reasonable and sufficient cause to be adjudged by him.

12th. In the event of any Clergyman conducting himself in such a manner as to create a public and notorious scandal, or being guilty of any gross neglect or abuse of his clerical duties, if the Archdeacon should be of opinion that the case is such as that the interests of religion require the suspension of any such person from his clerical functions, and should certify that opinion to you in writing under his hand, you will be authorised to act upon the Archdeacon's recommendation and responsibility, and to suspend any such clergyman accordingly; and it will be the duty of the Archdeacon immediately to transmit through you to his Diocesan a full statement of the case. If the restitution, or the further suspension, or the permanent removal of any such clergyman should be ultimately directed by the Bishop of the Diocese, you will act in that case in conformity with such decision as you may receive from him. It is, however, to be distinctly borne in mind that, as the Archdeacon will not interfere in recommending the suspension of any Clergyman, except on the ground of offences committed against the order and discipline of the Church of England, or of immoral and licentious conduct, you will exclusively retain in your own hands the power of animadverting upon the conduct of any Clergyman whose offences or misconduct may be merely of a political nature.

13th. If any special occasion should arise (such, for example, as the celebration of Public Fasts and Thanksgivings), in which it may be necessary to observe special and peculiar ecclesiastical ceremonies, you will, in His Majesty's name, issue such a Proclamation for that purpose, as may be prepared and recommended by the Archdeacon under your immediate sanction and direction.

All questions which may arise for your decision relative to the stipends and allowances of the inferior Clergy, will be submitted by you to the Archdeacon for his opinion and advice before you finally adopt any measures respecting them.

14th. I have to communicate to you His Majesty's pleasure that the Archdeacon is to take rank and precedency in the Colony next after the Lieut.-Governor; and you will, on all public occasions, be careful to confer on him such marks of attention as may most effectually recommend his person and his Sacred Office to the respect of the lower and less educated classes of society.

15th. In the event of any difference of opinion arising between the Archdeacon and yourself, respecting your relative duties and authority, you will transmit to me such explanations as the case may require, in order that I may be enabled to furnish you with instructions for your guidance.

16th. His Majesty, having been pleased to grant a salary of two thousand pounds sterling English money, for the support of the Archdeacon, you will observe that this salary commenced from the 5th April last, the date of Mr. Scott's appointment, and that it will be payable by half-yearly instalments on the usual half-yearly days, and that each half-yearly payment is to be effected in the same manner, in the same currency, and at the same rate of exchange,

in which the corresponding instalment of your own official income may have been paid. You will further defray, out of that part of the public revenues which is subject to your approbation, such moderate expenses as the Archdeacon may unavoidably incur in making his visitations, the charge for such expense being previously laid by you before your Council and allowed by them.

I have, etc.,

BATHURST

DOCUMENT E

REPORTS FROM COMMITTEES. SESSION 1831–1832.

Vol. IX [*East India Company's Affairs*, Vol. II]. Pp. 810 f.

Sketch of a Plan for the Ecclesiastical Government of British India, and of certain Colonial possessions of the Crown of Great Britain.

British India to be divided into two dioceses—Calcutta and Madras.

The Diocese of Calcutta to comprise the presidency of Bengal and its dependencies, viz :—the settlements on the eastern coast of the Bay of Bengal, Prince of Wales' Island, Malacca, etc.

The Diocese of Madras, the two presidencies of Madras and Bombay.

The Diocese of Calcutta to be divided into two archdeaconries, Calcutta and Agra. The archdeaconry of Agra to extend from the extreme North of the British Possessions to Allahabad inclusive, and from the Western limits of the presidency to the River Goggree ; all the rest of the diocese to be considered as appertaining to the archdeaconry of Calcutta.

The Diocese of Madras to retain the two archdeaconries of Madras and Bombay as they stand at present.

For the establishment and number of chaplains in the Diocese of Calcutta, see Sketch, No. 2.[1]

The colonial possessions of the Crown as here enumerated, viz :—The Cape of Good Hope, The Isle of France, Ceylon, New South Wales, Van Diemen's Land, and the detached settlements established, or which may hereafter be established, on the coast of New Holland, to be placed under the joint superintendence and authority of the two Indian Bishops in matters purely ecclesiastical ; who shall be empowered to perform all the functions attaching to the office of a Bishop within the several colonies above mentioned, the civil governors retaining and continuing to exercise all the powers and privileges conferred upon them by their Letters Patent. Each colony to be visited once in three years, at least, by one or the other of the Bishops ; the time and manner of holding the visitation being arranged between the prelates themselves in concert with the respective colonial governments.

The Bishop of Calcutta to receive from the Indian Government

[1] This is not printed here. It will be found in the *Reports from Committees*, immediately following this document, p. 811.

£4000 sterling by the year paid in full as salary: Sicca rupees 500 per mensem[1] for house rent and an extra allowance of Sa Ra 1,000 per mensem, while actually engaged on visitation, but the time employed in such visitation never to exceed four months in one year.

The amount of salary and allowances for the Bishop of Madras to be determined hereafter.

Each Bishop to receive £1,000 sterling per annum from the King, with an allowance from the territorial revenues of each colony visited, sufficient to cover his passage money and travelling expenses actually on visitation.

The salary of the archdeacon to be fixed at Sa Ra 1,200 per mensem with Sa Ra 300 for house rent.

All salaries to be paid in full according to the plan now pursued in respect to the judicial appointments.

DOCUMENT F

LETTERS PATENT FOR ASSIGNING NEW LIMITS TO THE DIOCESE OF CALCUTTA, AND FOR CONFERRING ON THE BISHOP OF CALCUTTA METROPOLITICAL JURISDICTION IN INDIA.

Howley's Register, Folio 169 ff.

William the Fourth by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to all to whom those presents shall come greeting. Whereas, His late Majesty our Royal Father, King George the Third, did by Letters Patent under the Great Seal of our United Kingdom of Great Britain and Ireland, bearing date the Second day of May, in the Fifty Fourth year of His Reign, and found and constitute our Territories, under the Government of the East India Company, to be a Bishop's See, and to be called from thenceforth the Bishopric of Calcutta.

And His said late Majesty by His same Letters Patent, did give and grant to THOMAS FANSHAW MIDDLETON, the first Bishop of Calcutta, and to his Successors Bishops of Calcutta, full power and authority to perform all the Functions peculiar and appropriated to the Office of a Bishop, within the limits of the said See, but not elsewhere, and also by himself or themselves, or by his or their Commissary or Commissaries, to exercise Jurisdiction, Spiritual and Ecclesiastical, in and throughout the said See and Diocese, according to the Ecclesiastical Laws of England, in the several causes and matters therein expressed and specified and no other. And His said late Majesty by His same Letters Patent, did make a further declaration concerning the special causes and matters in which he would, that the aforesaid Jurisdiction be exercised. And did give

[1] Sicca-rupee—originally a newly coined rupee—accepted at a higher value than those worn by use, latterly a rupee coined under the Government of Bengal from 1793, and legally current till 1836—of a greater weight than the Co.'s rupee. Cf. *A New English Dictionary on Historical Principles*, Vol. IX, Part I. Edited by W. A. Craigie and Henry Bradley, Oxford.

and grant to the aforesaid Bishop and His Successors, certain powers and authorities for the performance of His and Their Episcopal Functions, subject, however, to certain limitations and reservations, as on reference to the said Letters Patent will more fully appear, and for aiding the said Bishop of Calcutta, in the due and Canonical Superintendance of Ecclesiastical person and affairs. His said late Majesty, by His said Letters Patent, did erect one Archdeaconry in and over the Presidency of Fort William in Bengal, to be styled the Archdeaconry of Calcutta, and one other Archdeaconry, in and over the Presidency of Fort Saint George, on the Coast of Coromandes, to be styled the Archdeaconry of Madras, and also one other Archdeaconry in and over the Presidency and Island of Bombay, on the Coast of Malabar, to be styled the Archdeaconry of Bombay, all such Archdeaconries to be subject and subordinate to the said Bishop's See of Calcutta.

And His said late Majesty did by His said Letters Patent, nominate his well beloved Henry Lloyd Loring, Doctor in Divinity, to be Archdeacon of the Archdeaconry of Calcutta. His well beloved John Moulsey, Doctor in Divinity, to be Archdeacon of the Archdeaconry of Madras, and His well beloved George Barnes, Doctor in Divinity, to be Archdeacon of the Archdeaconry of Bombay. And His said late Majesty did by His said Letters Patent declare that each of the said Archdeacons, should, within His Archdeaconry, be assisting to the Bishop of Calcutta, in the exercise of such Episcopal Jurisdiction, as His said late Majesty had by His said Letters Patent been pleased to limit to the said Bishop of Calcutta according to the duty of an Archdeacon by the Ecclesiastical Laws of England. And His said late Majesty did by His said Letters Patent further ordain and declare that each of the said Archdeacons, should within the Archdeaconry be and be taken to be without a further appointment the Commissary of the said Bishop of Calcutta and His Successors, and should exercise Jurisdiction in all the matters aforesaid according to the duties and functions of a Commissary by the said Ecclesiastical Laws. And His said late Majesty by His said Letters Patent, did grant to the said Bishop of Calcutta and His Successors, the right of collating to the said Offices of Archdeacon at all times, to come after the death or other avoidance of the said Henry Lloyd Loring, John Moulsey and George Barnes, any Priest being one of the Chaplains of the said Company resident in India. And His said late Majesty did by His said Letters Patent, further will and direct that the said Bishop of Calcutta and His Successors might from time to time appoint a proper and sufficient person in each Archdeaconry, to act as Registrar thereof, and in case of no Registrar being so appointed or the Registrar being unable to act as Registrar thereof, His said late Majesty willed and directed that the said Bishop of Calcutta or the Commissaries respectively, might appoint any sufficient person as actuary to do all acts as Registrar. And His said late Majesty, did by His said Letters Patent, will that during a vacancy of the said See, by the demise of the said Bishop or His Successors or otherwise the Episcopal Jurisdiction and Functions appertaining to the said See should be exercised as far as by Law, they might by the Archdeacon of Calcutta for the time being, or in case of a vacancy of the said Archdeaconry then by the Archdeacon of Madras or the Arch-

deacon of Bombay or by Two Clergymen of the Church of England resident within the Diocese as might be directed by the Governor General in Council of Fort William. And His said late Majesty did by His said Letters Patent, nominate, institute and appoint divers Officers therein named, to be Commissioners delegate, to hear, decide and determine appeals, in manner therein mentioned or referred to. And His said late Majesty, did by His said Letters Patent, further will and declare and obtain, that in case any proceedings should be instituted against any Archdeacon, such proceedings should originate and be carried on before the said Commissioners delegate whom by His said late Majesty by His said Letters Patent, authorised and directed to take cognisance of the same. And whereas His said late Majesty Geo. Third. did by other Letters Patent, under the Great Seal of our said United Kingdom, bearing date the twenty seventh day of September, in the Fifty Seventh year of His Reign, erect, found and constitute an Archdeaconry in and over the British Territories within the Island of Ceylon, in the said East Indies, to be styled the Archdeaconry of Columbo, such Archdeaconry to be subject and subordinate during his Royal pleasure to the Jurisdiction of the Archbishop of Calcutta. And His said late Majesty, did by His said Letters Patent, declare that the said Archdeacon should within his Archdeaconry be assisting to the Bishop of Calcutta, in the exercise of his Episcopal Jurisdiction and Functions, according to the duty of An Archdeacon by the Ecclesiastical Laws of England, and should be the Commissary of the said Bishop and His Successors, and should exercise Jurisdiction according to the duty and Functions of a Commissary, by the said Ecclesiastical Laws. And His said late Majesty, did by His said Letters Patent, will and direct, that the said Bishop, and His Successors, might from time to time during all such times as the said Archdeaconry should be subject to the Jurisdiction of the Bishop of Calcutta, appoint a proper and sufficient person in the said Archdeaconry to act as Registrar thereof, and in the case of no Registrar being so appointed or the Registrar being unable to act, His said late Majesty willed and directed that the said Bishop, or the Commissary respectively, might appoint any sufficient person as Actuary to do all acts as Registrar. And whereas His said late Majesty, by other Letters Patent, under the Great Seal of our United Kingdom, and bearing date the Twenty Seventh day of September, in the Fifty seventh year of His reign, in order to give full effect to his Royal intention in respect of the Archdeaconry of Columbo and for removing all doubts touching the Jurisdiction of the Bishop of Calcutta and His Successors, over the said Archdeacon and Archdeaconry, did give and grant that the Bishop of Calcutta and His Successors, during His Royal pleasure, all and singular, the Rights, Powers, Authorities, Functions and Jurisdictions, in and over the said Archdeaconry and Archdeacon of Columbo, which he and they might lawfully exercise within the three Archdeaconries of Calcutta, Madras, and Bombay, except the right of collating to the said Archdeaconry of Columbo, subject always to the several limitations, reservations and provisions which in the said Letters Patent of the Second day of May, in the fifty fourth year of His said late Majesty's reign, were fully set forth. And His said late Majesty, willed that all clauses, matters and things contained in His said last mentioned

Letters Patent, should be deemed to be applicable to the Jurisdictions and Functions of the Bishop of Calcutta in regard to the Archdeaconry of Columbo and to all appeals by persons who should conceive themselves aggrieved by any judgment or decree of the said Bishop or his Commissary, and to all proceedings against the said Archdeacon, as if the same were therein inserted word for word, provided only that the copy of the sentence in any such case should be certified and transmitted to the Governor of Ceylon for the time being. And whereas the Venerable Thomas Robinson, Master of Arts, is the present Archdeacon of the said Archdeaconry of Madras, and whereas the Venerable James Sutherland Moncrief Glenie, is the present Archdeacon of the Archdeaconry of Columbo. And whereas His said late Majesty our Royal Brother, King George the Fourth, did by Letters Patent under the Great Seal of our said United Kingdom of Great Britain and Ireland, bearing date the twenty seventh day of May, in the fourth year of His reign, ordain and declare His Royal will and pleasure, "that from thenceforth the whole of our Territories within the Limits of the Charter of the East India Company, should form and constitute the See and Diocese of Calcutta." And whereas by our Letters Patent under the Great Seal of our said United Kingdom, bearing date the sixteenth day of April, 1833, in the third year of our reign, we appointed our well beloved Daniel Wilson, Doctor in Divinity, to be Bishop of the said Bishopric of Calcutta, which was then vacant. And whereas the present Diocese of the Bishopric of Calcutta is of too great an extent for the incumbent thereof to perform efficiently all the duties of the Office, without endangering his health and life, And it is therefore expedient to assign new limits to the said Diocese by dissevering therefore the Territories hereinafter mentioned, and to found a separate and distinct Bishopric, by, but nevertheless the Bishop thereof to be subordinate and subject to the Bishop of Calcutta for the time being as his Metropolitan. Now know ye that for the accomplishment of the aforesaid objects, we do by these presents ordain and declare our Royal will and pleasure, that from and after the tenth day of October next, the Territories now within the limits of the Presidency of Madras and also the Territories within our Island of Ceylon and also our Colonies of New South Wales and Van Diemens Land and their respective Dependencies, shall be dissevered from, and cease to be parts of the said Diocese and See of Calcutta, And we do by these presents revoke all and singular the Rights, Powers, Authorities, Functions and Jurisdictions of the said Bishop of Calcutta and His Successors, in and over (the Territories within the said presidence of Madras, and also) the Territories within our Island of Ceylon, and our said Colonies of New South Wales and Van Diemens Land and their respective Dependencies except only such Rights, Powers, Authorities, Functions and Jurisdictions as shall be hereinafter limited or confirmed, and to the end that our said intention may be the better carried into effect.

We both hereby will declare and ordain that the said Thomas Robinson and His Successors Archdeacons of the said Archdeaconry of Madras, shall from and after the said tenth day of October next, cease to be assisting to the said Bishop of Calcutta and His Successors in the exercise of the ordinary Episcopal Jurisdiction, by

His said late Majesty King George the Third, limited by His said first mentioned Letters Patent, to the said Bishop of Calcutta, and cease to be the Commissary of the said Bishop of Calcutta and His Successors. And it is our further Will and we do hereby further declare that the Power, Right and Authority, to the said Bishop of Calcutta and His Successors, given and granted by the same Letters Patent, to collate to the Office of Archdeacon of Madras, any Chaplain of the East India Company, resident in India, shall from and after the said tenth day of October next, cease and be revoked, and we do hereby revoke the said Power, Right and Authority accordingly. And it is our further will and we do hereby further declare that the power right and authority to the said Bishop of Calcutta and his successors given and granted by the same Letters Patent to appoint a Registrar of the said Archdeaconry of Madras and to assume an Actuary to act as Registrar thereof shall from and after the said tenth day of October next cease and be revoked and we do hereby revoke the said power right and authority accordingly. And we do hereby further will and declare and ordain, that the said James Sutherland Montcrief Glenie and His Successors, Archdeacons of Columbo, shall from and after the said tenth day of October next, cease to be assisting to the said Bishop of Calcutta and His Successors, in the exercise of his Episcopal Jurisdiction and Functions, by the said Letters Patent of His said late Majesty, King George the Third, bearing date the twenty seventh day of September, in the fifty seventh year of His reign, limited as well, expressly or by reference to the said Bishop of Calcutta, and cease to be the Commissary of the said Bishop of Calcutta and His Successors. And it is our further will, and we do hereby further declare that the Power, Right, and Authority, to the said Bishop of Calcutta and His Successors given and granted by the said Letters Patent, of His said late Majesty, King George the Third, bearing date the twenty seventh day of September, in the Fifty Seventh year of His reign, to appoint a Registrar of the said Archdeaconry of Columbo, and to assume an Actuary to act as Registrar thereof, shall from and after the said tenth day of October next, cease and be revoked, and we do hereby revoke the said Power, Right and Authority accordingly, provided that nothing herein contained shall extend to affect any matter or cause now pending, on which before the said tenth day of October next, may be pending in the Court of the Bishop of Calcutta, or in the Court of any of his Archdeacons or Commissaries, and that every judgement or decree of the said Bishop or his Archdeacons or Commissaries already made, or hereafter to be made, in any matter or cause now pending or which shall be so pending as aforesaid, shall have such and the like force and effect in all respects, as if those our Letters Patent had not been made. And it is our further will, and we do hereby declare and ordain, that the said provision contained in the said Letters Patent, dated the second day of May, in the fifty fourth year of the reign of His said late Majesty, King George the Third for temporarily supplying a vacancy of the said See of Calcutta shall from and after the said tenth day of October next, cease and be revoked, and we do hereby revoke the same provision accordingly. And whereas it is our intention by Letters Patent, under the Great Seal of our said United Kingdom, bearing

even date with these presents, to erect, found and constitute our Territories in the East Indies within the limits of the Presidency of Madras, and also our Territories within the said Island of Ceylon, to a Bishop's See, and to be called from henceforth the Bishopric of Madras, and to name and appoint our well beloved Daniel Corrie, Doctor of Laws, now Archdeacon of Calcutta, to be Bishop of the See of Madras, and to grant to such Bishop of Madras and His Successors such or the like Ecclesiastical Jurisdiction and the exercise of such or the like Episcopal Functions within the said See of Madras, as were heretofore enjoyed and exercised by the said Bishop of Calcutta, within the limits of the said Presidency of Madras, and within our Territories in the said Island of Ceylon. Now we do further will and ordain, that the Bishop of the said See of Calcutta for the time being shall be and be deemed and taken to be the Metropolitan Bishop in India, and shall have and enjoy and exercise such Ecclesiastical Jurisdiction as hereinafter is mentioned, subject nevertheless to the general Superintendence and revision of the Archbishop of Canterbury for the time being, in the same manner as the said Bishop of Calcutta was subject and subordinate to the Archiepiscopal See of the Province of Canterbury in the exercise of all Ecclesiastical Jurisdiction and Powers, which previously, to those our Letters Patent were vested in the said Bishop and we will and ordain that the said Bishop of Madras shall be suffragan to the said Bishop of Calcutta and His Successors. And we give and grant unto the said Bishop of Calcutta and His Successors, full Power and Authority to perform all Functions, peculiar and appropriated to the Office of Metropolitan, within the limits of the said See of Madras, and to exercise Metropolitical Jurisdiction within the limits of the said See of Madras and to exercise Metropolitical Jurisdiction over the Bishop of Madras and his successors and the Archdeacon of Madras and Colombo and all other Chaplains, Ministers, Priests and Deacons in Holy Orders of the United Church of England and Ireland, within the limits of the said Diocese of Madras. And we do by these presents give and grant unto the said Bishop of Calcutta and His Successors, full power and authority to visit once in every five years, or oftener, if occasion shall require, as well the said Bishop of Madras and His Successors as all Ministers and Chaplains and all Priests and Deacons in Holy Orders of the United Church of England and Ireland resident in the said Diocese of Madras for correcting and supplying the defects of the said Bishop of Madras and His Successors, with all and all manner of Visitatorial Jurisdiction, Power and Coercion. And we do hereby authorise and empower the said Bishop of Calcutta and His Successors to inhibit during any such visitation of the said Diocese of Madras the exercise of all, or of such parts of the ordinary Jurisdiction of the said Bishop of Madras or His Successors as to him the said Bishop of Calcutta and His Successors shall seem expedient, in, and during the time of such visitation, to exercise by himself or themselves or his or their Commissaries, such Powers, Functions and Jurisdictions, in and over the Diocese of Madras as the said Bishop of Madras might have exercised if he had not been inhibited from exercising the same. And we do further ordain and declare that if any person against whom a Judgement or Decree shall be pronounced by the said

Bishop of Madras or His Successors, or his or their Commissary or Commissaries, shall conceive himself to be aggrieved by such sentence, it shall be lawful for such person to appeal to the said Bishop of Calcutta or His Successors, provided such appeal be entered within fifteen days after such sentence shall have been pronounced. And we do give and grant to the said Bishop of Calcutta and His Successors, full Power and Authority, finally to decide and determine the said appeals in as ample a manner as any of the Archbishops of England can or may hear and determine appeals from the Courts of the Bishop within his Province. And we do hereby authorise and empower the said Bishop of Calcutta, and His Successors, and his and their Commissary or Commissaries, to administer in his and their Metropolitical and Visitatorial and Appellate Jurisdiction over the said See of Madras, all such Oaths as the said Bishop of Calcutta and his predecessors have been accustomed lawfully to administer in his and their ordinary Jurisdiction. Nevertheless we do will, and by these Presents declare and ordain that in the exercise of the Metropolitical Visitatorial and Appellate Jurisdiction aforesaid hereby limited and given to the said Bishop of Calcutta and His Successors all grave matters of correction which are accustomed according to the practice of the Ecclesiastical Laws of England, to be judicially examined, shall in like manner be judically examined and proceeded in before the said Bishop of Calcutta and His Successors or His or Their Commissary or Commissaries and all such causes shall be proceeded in to final sentence in due form of Law. And we do further will and ordain, that in case any proceedings shall be instituted against any Bishop of Madras, such proceedings shall originate and be carried on before the said Bishop of Calcutta, whom we hereby authorise and direct to take cognisance of the same. And we further will that during a vacancy of the said See of Calcutta, by the demise of the Bishop thereof for the time being, or otherwise, the Episcopal Jurisdiction and Functions appertaining to the said See, shall be exercised by the Bishop of Madras for the time being, and in case of a vacancy in the said See of Madras, then the same Jurisdiction and Functions shall be exercised as far as by Law they may, by the Archdeacon of Calcutta for the time being or in case of a vacancy of the said Archdeaconry, then by the Archdeacon of Madras, or the Archdeacon of Bombay, or by two Clergymen of the Church of England, resident within the Diocese of Calcutta, as may be directed by the Governor General of India in Council. And we further will, that during a vacancy of the said See of Madras, by the demise of the Bishop thereof for the time being, or otherwise, the Episcopal Jurisdiction and Functions appertaining to such See, shall be exercised by the Bishop of Calcutta for the time being, and in case of a vacancy of the said See of Calcutta, then the same Jurisdiction and Functions shall be exercised as far as by Law they may by the Archdeacon of the See of Madras for the time being, or in case of a vacancy of such Archdeaconry then by two Clergymen of the Church of England, resident within the Diocese, as may be directed by the Governor General of India in Council. And we further will and ordain that a copy of every sentence of deprivation suspension or other Ecclesiastical punishment or censure whatsoever promulgated, or given or affirmed by the said Bishop of Calcutta or His Successors

in the exercise of His or Their Metropolitical Visitatorial, or Appellate Jurisdiction shall be certified and transmitted to the same persons and in the same manner as copies of sentences promulgated or given by the said Bishop of Calcutta, or His Successors in the exercise of His or Their ordinary Jurisdiction, ought to be certified and transmitted. And we further ordain that the Supreme Court of Judicature at Calcutta, Madras or Bombay, or in Ceylon as the case may be, shall have such and the like Jurisdiction and Power of interfering by writ of prohibition or Mandamus in regard to all proceedings to be had or instituted or which might be had or instituted in pursuance of those presents, subject to the same Laws, Restrictions and Rules of practice as is or has been exercised by our Court of Kings Bench at Westminster, in regard to proceedings in the Ecclesiastical Court in England, regard being had nevertheless to any special provisions or exceptions contained in those our Letters Patent, and to any other Laws and regulations specially applicable to, or concerning our Territories in the East Indies, or the See and Diocese of Calcutta. Moreover it is our Royal Will, and we do hereby declare and ordain that nothing in those Presents contained shall extend or be construed to extend, to repeal, vary or alter the provisions of the several Charters whereby Ecclesiastical Jurisdiction has been given to the said Court of Judicature respectively, so far as the same does not appertain to the correction of Clerks or the Spiritual Superintendence of Ecclesiastical persons, or to give to the said Bishop of Calcutta or His Successors, any Authority or Jurisdiction whatever, in matters now cognisable in the said Courts except as herein last before excepted. And moreover we command and enjoin the Court of Directors of the East India Company and their Governors, Officers and Servants and our Governor of Ceylon, and all and singular our Governors, Judges and Justices and all and singular Chaplains, Ministers and others, our subjects within the parts aforesaid, that they and every of them, be in and by all lawful way and means aiding and assisting to the said Bishop of Calcutta and His Successors, in the execution of the promises in all things, in witness whereof we have caused these our Letters to be made Patent, Witness ourself at Westminster, the Thirteenth day of June, in the Fifth year of our reign.

DOCUMENT G

GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.

(*Historical Records of Australia, Series I*, Vol. XVII, pp. 224–233.)

Dispatch No. 76, per ship *Elizabeth;* acknowledged by Lord Glenelg, 30th November, 1835.

GOVERNMENT HOUSE,

SIR, *Sept.* 30/1833.

30 Sept. Order in Council for dissolution of Church Corporation

Having lately received the Order of the King In Council for dissolving the Church and School Corporation in New South Wales, unaccompanied by any intimation of the views of His Majesty's Government as to the future maintenance and regulation of Churches and Schools within the Colony, I deem it my duty to submit for your consideration such

observations upon these important subjects as my knowledge of the state of the Country enables me to offer, and to suggest such arrangement as will in my opinion meet with the favour and support of the great majority of the Colonists, and thereby promote with the best assurance of success the religious instruction and general education of this People.

1833 30 Sept. Problems re Churches and Schools

To enable you, Sir, to ascertain more clearly the propriety of the measures I shall have the honor to propose, I would observe that the Inhabitants of this Colony are of many different religious persuasions, the followers of the Church of England being the most numerous ; but there are also large bodies of Roman Catholics and Presbyterians of the Church of Scotland, besides Protestant Dissenters of many different denominations having separate Places of Worship. Of the Convicts who have arrived here for the last seven years, about one third are Irish and Catholic ; and, if the Families of these Persons, arriving from Ireland in considerable numbers, are taken into account, it may be stated with some probability of accuracy that about one fifth of the whole population of the Colony is Catholic. The Members of the Church of Scotland form a smaller proportion but are amongst the most respectable of the Inhabitants, and are to be found with few exceptions in the Class of Free Emigrants. For administering the offices of religion to these three principal denominations of Christians, there are of the Church of England an Archdeacon, fifteen Chaplains and four Catechists ; of the Church of Scotland four paid Ministers ; and of the Romish Church there are a Vicar General and two Priests at present receiving Stipends from Government ; but further sums have been voted by the Council for the support of four additional Roman Catholic Chaplains in the next year. The Clergy of the Church of England are supported chiefly by payments from the Treasury and to a small amount by the Rent and Sale of Lands formerly granted to the Church and School Corporation. The charge for the Church of England next year including that for Minor Church Officers and contingencies of all sorts, is estimated at £11,542 : 10s. The whole charge on the Public Treasury for the Church of Scotland for the same period is £600 and for the Roman Catholic Chaplains and Chapels £1,500. The Protestant Dissenters receive no support from Government beyond some small grants of Land made to some of them as Sites, upon which to erect their Places of Worship.

Religious demonina-tions in Colony

Proportion of Roman Catholics

Presbyte-rians

Clergy supported by Govern-ment

With respect to places of Worship, it may be convenient to observe here that the Church of England possesses at this time in Sydney and within 40 miles of it seven Stone or Brick Churches of Moderate size but respectable appearance, besides two others of the same description in more remote parts of the Colony, and several less permanent Buildings in various Places. The expense of erecting these Houses I cannot immediately ascertain ; but it has been considerable and has been wholly defrayed by Public Funds. The Church of Scotland possesses one Church of respectable exterior in Sydney, and two or three temporary Buildings in the Country Districts. The Scots Church in Sydney was built by subscription, aided by a loan from

1833 30 Sept. Churches erected and proposed

this Government amounting to £ , for which a Mortgage has been taken of the premises, but no part of the Money has yet been repaid. The Church of Scotland has received no other aid for Buildings that I can discover. The Roman Catholics possess one large and handsome Church in Sydney not yet completed. In aid of its construction, donations amounting in all to about £1,200 have been at different times granted by this government. The Sum of £400, included in that of £1,500 before mentioned, has been appropriated by the Council, to be paid in the next year in aid of a similar sum to be raised by private subscriptions, for erecting Roman Catholic Chapels at Maitland and Campbelltown. A Chapel was begun at the latter place as well as at Paramatta some years ago, but neither have been completed from want of funds.

Indulgences for Chaplains of Church of England

The Chaplains of the Church of England are provided with Glebes of 40 Acres each or with a Money allowance in lieu, and with Houses or Lodging money. No advantage of this kind, obtained at the Public expense, is possessed by the Clergy of the Established Church of Scotland or by the Roman Catholics, if I except a Grant of 40 acres for the use of the Minister of the Scots Church at Bathurst.

Opinion adverse to Preference in expenditure on Church of England

A distribution of support from the Government of so unequal an amount as that, which I have just described, cannot be supposed to be generally acceptable to the Colonists, who provide the funds from which this distribution is made. Accordingly the magnitude of the sums annually granted for the support of the Church of England in New South Wales is very generally complained of, and a Petition to the Governor and Legislative Council has been lately prepared at a Public meeting and very numerously signed praying for a reduction of this Expenditure. If the complaint be well founded, as I confess I consider it to be, the recent dissolution of the Church Corporation affords an opportunity for placing upon an equitable footing the support, which the principal Christian Churches in the Colony may for the present claim from the Public Purse. I would therefore earnestly recommend to His Majesty's Government to take the whole case into their early consideration, and to adopt such an arrangement as may be expected to give general satisfaction to the Colonists. I would observe that, in a New Country to which Persons of all religious persuasions are invited to resort, it will be impossible to establish a dominant and endowed Church without much hostility and great improbability of its becoming permanent. The inclination of these Colonists, which keeps pace with the Spirit of the Age, is decidedly adverse to such an Institution ; and I fear the interests of Religion would be prejudiced by its Establishment. If on the contrary support were given as required to every one of the three grand Divisions of Christians indifferently, and the management of the temporalities of their Churches left to themselves, I conceive that the Public Treasury might in time be relieved of a considerable charge, and, what is of greater importance, the people would become more attached to their respective Churches and be more willing to listen to and obey the voice of their several Pastors.

1833 30 Sept. Proposal for equitable distribution of support

It may be expected that, in addressing you, Sir, on this occasion,

I should submit some specific arrangement for your consideration. I can not without much diffidence proceed to discharge this duty; but, as I have reason to believe that the outline which follows is in unison with the sentiments of many of the most intelligent of the Colonists, I have the less hesitation in laying it before you.

I would propose that, wherever a moderate congregation can be collected throughout the Colony, and that a subscription shall have been entered into for Building a Place of Worship and Minister's dwelling amounting to a Sum not less than £300, upon application an equal Sum shall be issued from the Colonial Treasury in aid of the undertaking, and that the Buildings when completed and the grounds, upon which they stand whether provided by the Subscribers or granted by the Crown, shall be vested in Trustees elected by the Congregation. These Trustees shall have power to dispose of the Seats or Pews (excepting one fourth, which shall be reserved as free sittings) and, out of the Rents or by means of voluntary subscriptions, The Trustees shall provide for the maintenance of Church Officers, the repairs of the Church, Minister's Dwelling, Church Yard, Burial Ground and Appurtenances, and the contingent expenses connected with the celebration of Divine Worship. The Buildings thus erected will be at no after period a charge upon the Public Revenue. A Chaplain of the Creed of the Congregation shall then be appointed by the Crown in the manner now practised, and his Stipend shall be issued by the Governor at the following rate:—If in the District where the Church or Chapel to which he shall be appointed is situated, there be a Resident Population of one hundred Adults who shall subscribe a declaration, setting forth their desire to attend such place of Worship, the Chaplain shall receive from the Treasury one hundred pounds a year; if there be two hundred Adults, one hundred and fifty pounds; and if five hundred adults, then two hundred pounds, which is proposed as the maximum Salary to be paid by the Government to a Chaplain of whatever persuasion.

System proposed for subsidy for erection of Churches and Parsonages

Stipends proposed for Clergy

In this way it is imagined that the erection of Places of Public Worship may be obtained wherever a competent congregation can be collected, whilst there will be secured to the officiating clergyman such a Moderate Stipend as is sufficient for his support but will not render him independent of his own exertions or the respect of the congregation. These Chaplains should be empowered to perform the ceremonies of Marriage, Baptism and Burial in their several Churches for Moderate Fees, and should be secured in the receipt of their Stipends unless removed from their Chaplaincies for misconduct. The whole of this arrangement, with such further details as shall seem necessary, will require the authority of an Act of the Governor and Council to put it into operation.

Advantages of Proposals

Duties of Chaplains

Necessity for act of Council

The foregoing system may be applied to the existing Churches of the Establishment by vesting them and the Ministers' Houses and Glebes in Trustees for the purposes before mentioned; but the present Incumbents should remain with the Salaries and advantages they now enjoy, so far

Extension of system to existing Churches

as these emoluments have been secured to them by previous engagement with the Government.

Archdeacon Proposed as Suffragan to Archbishop of Canterbury or Bishop of London

For the better discipline of the Chaplains of the Church of England, for obtaining the necessary celebration of the Rites of Ordination and Confirmation, and for maintaining the connexion of this Church with the Metropolitan, I would suggest that the Archdeacon of New South Wales be made a suffragan to the Archbishop of Canterbury or Bishop of London. The Stipend of the present Archdeacon is more than sufficient for the proper discharge of this office, and that of His Successor might be reduced very considerably. The inconvenience attending the dependance of this Church on the authority of a Bishop placed at the distance of Calcutta from Sydney is too obvious to require much proof; but the circumstance, referred to in a letter recently addressed to me by Archdeacon Broughton a Copy of which I have the honour to transmit, placed this matter in a striking point of view.

Objections to jurisdiction of Bishop of Calcutta

Presbytery for Church of Scotland

Appointment of Vicar General

Increased Salary proposed for Vicar-General

The establishment in the Colony of a Presbytery of the Church of Scotland, which I had the honour to recommend in my despatch of the 8th July last, No. 56, will secure the proper discipline of that Church; and the recent appointment of a Vicar General with whose discretion, character and morals I have the greatest reason to be satisfied, will I hope effect what is required in the Roman Catholic Church. I am inclined, however, to think that the Salary of £200 a year is too low for the office, and that it might be advantageously raised to £400 to enable the Vicar General to visit frequently the Chapels in the Interior.

In the foregoing outline, I have limited the support of the Government to the three principal Christian Congregations in the colony. This limitation may be considered an objection to the Plan, as it may be urged that, in granting assistance systematically to more than one Church a claim is given for assistance upon the same principle to every Congregation of Dissenters and of Jews. This however is an objection to the Theory and is not likely to interfere with the practical benefits of the Plan. If it should be thought proper at any future period to extend assistance to other Congregations whose Members may seem to require it, there will be nothing in the present arrangement to prevent it. Or, if it shall be deemed more advisable, the proposed system may be established by the local law as it affects the Church of England, only leaving it to the discretion of The Governor and Council to extend a similar provision to such other congregations as shall require it. At this early period of the Colony's existence, it is I think necessary that the Government should grant pecuniary assistance for the establishment of religious Institutions, and take upon itself the nomination of the Ministers; or it might happen that the Ordinances of Christianity would become altogether neglected or its tenets perverted by incompetent Teachers.

Claims of Dissenters and Jews for support

Proposed adjustment of claims

I cannot conclude this subject without expressing a hope, amounting to some degree of confidence, that, in laying the foundations of the Christian Religion in this young and rising Colony

by equal encouragement held out to its Professors in, their several Churches, the people of these different persuasions will be united together in one bond of peace and taught to look up to the Government as their common protector and friend, and that thus there will be secured to the State good subjects and to Society good men.

Prospects of religious tolerance

I shall now beg leave to lay before you a brief account of the Schools, which have been lately under the Superintendence of the Church and School Corporation. The principal of these are the Male and Female Orphan Schools, at the former of which 133 Boys are now maintained and educated at an expense, estimated at the year 1834 at £1,300, and at the latter 174 Girls at an estimated expense of £1,500 exclusive of supplies obtained from the lands set apart for the use of these Schools. The buildings of the Female School are handsome and commodious, and those for the Boys are sufficient for the purpose. In both of these Schools, the Children are brought up exclusively in the doctrines of the Church of England. As they are received at a very early age, and those who are not Orphans in the strict meaning of the term are for the most part deserted or neglected by their Parents, it is proper that they should be so brought up. There is in Paramatta also a considerable Boarding School called the King's School, at the head of which is a Clergyman of the Church of England with a salary of £100 a year only, but who has been promised the occupation of a House to be built at the Public expense to contain from 60 to 80 Boarders and Day Scholars. The House not being yet built, two are rented in the Village by Government at £80 per annum in which the Master receives at present 54 Boarders and 15 Day Scholars, the former at the rate of £28 and the latter at from £6 to £10 per year. This arrangement, which originated I believe with the late Archdeacon, is an expensive one, and the wealthier part of the community will be the greatest gainers by it. The three Schools thus described now are and will in all probability continue to be exclusively for the Church of England.

Report re Schools

Orphan Schools

King's School at Parramatta

They may be supported and the Orphan Schools extended by means of the Income, which will at no great distance of time be derived from the Lands granted under Seal to the Church and School Corporation, and which on its dissolution became by the terms of the Charter vested in the Crown, to be disposed of by His Majesty, His Heirs or Successors, in such manner as shall appear " most conducive to the maintenance and promotion of Religion and the Education of Youth in the said Colony." Under these terms, the Income of the Lands may be applied to the support of any of the Churches or Schools referred to in this despatch.

Means of support for Schools

The primary Schools Established by the Corporation, which are 35 in number situated in various parts of the Colony, attended upon an average by 1,248 Children of both sexes, are charged in the Estimates for 1834 at £2,756. These are Superintended by the Chaplains, and in all of them the Catechism of the Church of England is taught; and although Children of other persuasions may and do sometimes attend, these Schools are necessarily considered as belonging to

Primary or Parish Schools of Church of England

the Church of England. Thus the charge for all the Schools of this description for the year 1834 is taken at £5,736, to which should be added a Vote of the Legislative Council of £2,300 for the site and Buildings for the King's School at Paramatta. Nothing has been granted to any primary School connected with the Church of Scotland; but a loan of £2,500 has lately been made by the Government and secured by Mortgage for aiding the erection of the Scots College. The sum of £800 has been voted for Roman Catholic Schools for the year 1834.

Votes and loans for Schools

You may thus perceive, Sir, the great disproportion, which exists in the support given by the state to Schools formed for the use of different denominations of Christians in the Colony; a disproportion not based on the relative numbers of each, but guided it would seem by the same principles which have regulated the support afforded to the different Churches. It is a subject of very general complaint. I am inclined to think that Schools for the general education of the Colonial Youth, supported by the Government and regulated after the manner of the Irish Schools, which since the year 1831 receive aid from Public Funds, would be well suited to the circumstances of this Country. I have not by me the parliamentary papers to refer to, and cannot give those Schools their proper designation; but I allude to those, in which Christians of all Creeds are received, where approved Extracts from Scripture are read, but no religious instruction is given by the Master or Mistress, such being imparted on one day in the week by the Ministers of the different religions, attending at the School to instruct their respective Flocks. I am certain that the Colonists would be well pleased to find their funds liberally pledged to the support of Schools of this description. It would be necessary however that Government took the lead in their Institution, fixing the places from time to time where they should be established as population increased, erecting the School Houses, and appointing well qualified Masters and Mistresses to be brought from Europe if need required. The Salaries of such Persons should be liberal, not less than from £100 to £150 per annum including House Rent. Whatever weekly payments were obtained from the Parents of the Children, who attend these Schools, should be applied to the repair of the School House and the purchase of School requisites under the care of a Local Committee. In like manner, Infant Schools should be established in the Towns and other populous places. I may without fear of contradiction assert that in no part of the world is the general education of the People a more sacred and necessary duty of the Government than in New South Wales. The reasons are too obvious to require that I should state them. The proposed arrangement will like that for the Churches require a local law.

Disproportion in support of denominational Schools

Proposed adoption of System of Irish Schools

The Salaries proposed for Schoolmasters

Necessity for Government support of Education

With respect to the 35 primary or parish Schools, as they are called, established by the Church and School Corporation, I would observe that they are of no great importance or value; and I propose that, in proportion as Schools for general Education were established in the manner I have described, the support of Government should be withdrawn from

Criticism of Parish Schools

the Primary Schools, leaving the Buildings and Furniture to any of the Congregation of the Church of England that might choose to maintain the Schools at their own expense.

I have thus, Sir, endeavoured to lay before you a brief sketch of the present state of the principal Churches and Schools in the Colony, and the outline of an arrangement for their future extension and management. I have reason to believe that a System, such as I have described, is favourably regarded by the Colonists in general, though it is not improbable that it would be opposed by all the Clergy. The opinions of the Archdeacon of New South Wales I know are opposed to it. He has declared, in a pamphlet published here in the last year, that a Protestant cannot subscribe to the erection of a Place of Worship for Roman Catholics without guilt. He has also expressed to me his opinion that, though Government might tolerate others, it should afford aid to one Church only, namely that which it believed to be the true Church. Knowing these to be the sentiments of the Archdeacon, I have merely informed him that I am about to address you, acquainting him with the substance of the arrangement I have proposed. In a separate despatch, I shall have the honour of transmitting a proposal laid before me by the Archdeacon for the future application and management of the property, which has by the dissolution of the Corporation become vested in the Crown, together with the substance of my reply.

Opinions of Rev. W. G. Broughton re religous tolerance

I hope to be honoured with an early communication on the subject of this despatch. Applications have lately been made to me for aid towards the erection of two Places of Worship of the Established Church of Scotland, the one at Sydney, the other at Bathurst. At the former place, the amount of Private Subscription is £640, at the latter £400. I intend to propose to the Legislative Council, at its Session in the next year for the Appropriation of the Revenue, that equal Sums be granted in aid of these undertakings, being assured that in so doing I shall only anticipate the instructions of His Majesty's Government.

Requests for grants for erection of churches

I have, &c.

(Sgd) Richd. Bourke.

(Enclosure)
(a copy of this letter is not available).

DOCUMENT H

LETTERS PATENT CONSTITUTING WILLIAM GRANT BROUGHTON BISHOP OF AUSTRALIA.

Howley's Register, Folio 186 ff.

WILLIAM the FOURTH by the Grace of God of the United Kingdom of Great Britain and Ireland King Defender of the Faith to all to whom these Presents shall come greeting. Whereas His late Majesty our Royal Father King George the Third did by Letters Patent under the Great Seal of our United Kingdom of Great Britain and Ireland bearing date the Second day of May

in the fifty fourth year of His reign erect found and constitute our Territories under the Government of the East India Company to be a Bishop's See and to be called from thenceforth the Bishopric of Calcutta. And His said late Majesty by the said Letters Patent did give and grant to Thomas Fanshaw Middleton the first Bishop of Calcutta and to His Successors Bishops of Calcutta full Power and Authority to perform all the Functions peculiar and appropriate to the Office of a Bishop within the limits of the said See but not elsewhere and also by himself or themselves or by his or their Commissary or Commissaries to exercise Jurisdiction Spiritual and Ecclesiastical in and throughout the said See and Diocese according to the Ecclesiastical Laws of England in the several causes and matters therein expressed and specified and in no other. And His said late Majesty by the same Letters Patent did make a further declaration concerning the special causes and matters in which he would that the aforesaid Jurisdiction be exercised and did give and grant to the aforesaid Bishop and His Successors certain Powers and Authorities for the performance of his and their Episcopal Functions subject however to certain limitations and reservations as on reference to the said Letters Patent will now fully appear.

And whereas His late Majesty King George the Fourth our Royal Brother did by Letters Patent under the Great Seal of our said United Kingdom bearing date the Twenty Seventh day of May in the fourth year of His reign declare His Royal will and pleasure that from thenceforth the whole of our Territories within the limits of the Charter of the United Company of Merchants of England trading to the East Indies should form and constitute the See and Diocese of Calcutta.

And whereas our said late Royal Brother did by certain other Letters Patent under the Great Seal of our said United Kingdom bearing date the second day of October in the fifth year of His Reign erect found and constitute one Archdeaconry in and over the British Territories within the Colony of New South Wales and its dependencies to be styled the Archdeaconry of New South Wales to be subject and subordinate during the Royal Pleasure to the Jurisdiction Spiritual and Ecclesiastical of the Bishop of Calcutta for the time being and did name and appoint Thomas Hobbes Scott Clerk to be Archdeacon of the Archdeaconry of New South Wales subject nevertheless to the power of revocation thereinafter in the said Letters Patent expressed. And whereas our said late Royal Brother by certain other Letters Patent under the Great Seal of our said United Kingdom bearing date the sixth day of February in the tenth year of His reign did upon the resignation of the said Thomas Hobbes Scott name and appoint William Grant Broughton clerk to be Archdeacon of the Archdeaconry of New South Wales subject nevertheless to the powers of revocation and resignation therein mentioned and did thereby declare that if His said late Majesty His Heirs or Successors should think fit to revoke or recall the appointment of the said William Grant Broughton as Archdeacon aforesaid and should declare with his or their pleasure by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland that then the said William Grant Broughton from and after the notification

thereof in such manner as in the said Letters Patent should be directed the said Archdeacon should to all intents and purposes cease to be Archdeacon of the said Archdeaconry And whereas we did by our Letters Patent under the Great Seal of our said United Kingdom bearing date the thirteenth day of June in the fifth year of our reign ordain and declare our Royal Will and Pleasure that from and after the tenth day of October then next ensuing the Territories then within the limits of the Presidency of Madras and also the Territories within our Island of Ceylon and also our Colonies of New South Wales and Van Diemens Land and their respective dependencies should be dissevered from and cease to be parts of the said Diocese and See of Calcutta. And by the said Letters Patent we did revoke all and singular the Rights Powers Authorities, Functions and Jurisdictions of the said Bishop of Calcutta and His Successors in and over the Territories within the said Presidency of Madras and also the Territories within our Island of Ceylon and our said Colonies of New South Wales and Van Diemens Land and their respective dependencies except only such Rights Powers Authorities Functions and Jurisdictions as are thereinafter limited or confirmed and whereas the doctrine and discipline of the United Church of England and Ireland are professed and observed by a considerable part of our loving subjects resident in New South Wales Van Diemens Land and Western Australia and their dependencies. And our aforesaid subjects are deprived of some of the Offices prescribed by the Liturgy and usage of the Church aforesaid by reason that there is not a Bishop residing or exercising Jurisdiction and Canonical Functions within the same for remedy of the aforesaid inconveniences and defects we have determined to revoke and annul the Office or appointment of Archdeacon of the Archdeaconry of New South Wales and to erect all the Territories and Islands comprised within or dependent upon our Colonies of New South Wales Van Diemens Land and Western Australia into a Bishop's See or Diocese to be styled the Bishopric of Australia. Now know ye that in pursuance of such our Royal intention we do by these Letters Patent under the Great Seal of our United Kingdom of Great Britain and Ireland revoke and recall the appointment of the said William Grant Broughton as Archdeacon of the Archdeaconry of New South Wales to all intents and purposes whatsoever and we do hereby notify to him that his said appointment is revoked and recalled and we do will declare and ordain that the said appointment or office of Archdeacon of the Archdeaconry of New South Wales shall henceforth cease and determine. And we do further by these presents erect found make ordain and constitute all the Territories and Islands comprised within or dependent upon our said Colonies of New South Wales Van Diemens Land and Western Australia into a Bishop's See or Diocese and do declare and ordain that the same shall be styled the Bishopric of Australia and to the end that this our intention may be carried into due effect we having great confidence in the learning morals and probity of our well beloved and venerable the said William Grant Broughton heretofore Archdeacon of New South Wales do name and appoint him to be Bishop and ordinary Pastor of the said See of Australia so that the said William Grant Broughton shall be and be taken to

be Bishop of the Bishop's See of Australia and may by virtue of this our nomination and appointment enter into and possess the said Bishop's See as the Bishop thereof without any let or impediment of us our Heirs or Successors subject nevertheless to the power of revocation and to the right of resignation hereinafter most particularly expressed. Moreover we will and ordain by these presents that the Bishop of the said See of Australia and His Successors shall be subject and subordinate to the Archiepiscopal See of Canterbury and to the most Reverend Father in God William by divine providence Archbishop of Canterbury and His Successors in the same manner as any Bishop of any See within the Province of Canterbury in our Kingdom of England is under the authority of the Archiepiscopal See of the Province of Canterbury, and the Archbishop thereof. And we do further will and ordain that every Bishop of Australia shall at the time of his consecration take an oath of his due obedience to the Archbishop of Canterbury for the time being as his Metropolitan in the words or to the effect following "I William Grant Broughton appointed Bishop of Australia do profess and promise all due obedience and reverence to the most Reverend Father in God William by Divine providence Archbishop of Canterbury Primate of all England and Metropolitan and to His Successors so help me God through Jesus Christ" which oath shall and may be administered by the said Archbishop or Bishop assisting at such consecration or any one of them and to the end that all the matters and things herein prescribed may have their due effect. We do hereby signify to the most Reverend Father in God William Lord Archbishop of Canterbury Primate of all England and Metropolitan that we have erected and founded the aforesaid Episcopal See of Australia and have named and preferred the aforesaid William Grant Broughton heretofore Archdeacon of New South Wales to the said Bishopric and have appointed him the Bishop and ordinary Pastor thereof requiring and by the faith and love whereby he is bound unto us commanding the said William Archbishop of Canterbury forthwith to consecrate the aforesaid William Grant Broughton Bishop of Australia in manner accustomed and diligently to do and perform all other things appertaining to his Office in this behalf with effect. And we do by these presents give and grant to the said William Grant Broughton and His Successors Bishops of Australia full Power and Authority to admit into the Holy Orders of Deacon and Priest respectively any person whom he shall upon examination deem duly qualified especially for the purpose of taking upon himself the cure of souls or officiating in any spiritual capacity within the limits of the said Diocese of Australia and residing therein. And we do by these Presents will and ordain that a declaration of such purpose and a written engagement to perform the same under the hand of such person being deposited in the hands of such Bishop shall be held to be a sufficient Title with a view to such ordination and that in every such case it shall be distinctly stated in the Letters of Ordination of every person so admitted to Holy Orders that he has been ordained for the cure of souls within the limits of the said Diocese of Australia only and that unless such person shall be a British Subject of or belonging to our said United Kingdom of Great

Britain and Ireland he shall not be required to take and make the Oath and Subscriptions which persons ordained in England are required to take and make. And we hereby further give and grant to the said William Grant Broughton and His Successors Bishops of Australia full Power and Authority to confirm those that are baptised and come to years of discretion and to perform all other Functions peculiar and appropriate to the Office of Bishop within the limits of the said See of Australia but not elsewhere such Bishop and His Successors having been first duly ordained or consecrated Bishop according to the form prescribed by the Liturgy of the Church of England and also by himself and themselves or by His or Their Commissary or Commissaries to exercise Jurisdiction Spiritual and Ecclesiastical in and throughout the said See and Diocese of Australia according to the Ecclesiastical Laws of England which are lawfully made and exercised in England in the several causes and matters hereinafter in these Presents expressed and specified and no other and for a declaration of our Royal will containing the special causes and matters in which we will that the aforesaid Jurisdiction shall be exercised we have further given and granted and do by these Presents give and grant to the aforesaid Bishop of Australia and His Successors full Power and Authority by himself or themselves or by His or Their Commissary or Commissaries by him or them to be thereunto especially authorised to grant Licences to Officiate to all Ministers and Chaplains of all the Churches or Chapels or other places within the said Diocese of Australia wherein Divine Service shall be celebrated according to the Rites and Liturgy of the Church of England and to visit all such Ministers and Chaplains and all Priests and Deacons in Holy Orders of the United Church of England and Ireland resident in their said Diocese of Australia with all and all manner of Jurisdiction Power and Coercion Ecclesiastical that may be requisite in the premises as also to call before him or them or before his or their Commissary or Commissaries at such competent days hours and places whatsoever where and so often as to him or them shall seem meet and convenient the aforesaid Ministers Chaplains Priests or Deacons in Holy Orders of the United Church of England and Ireland or any of them and to require by witnesses to be sworn in due form of Laws and all other lawful ways and means by which the same may be best and most effectually done as well concerning their morals as their behavour in their said Offices and stations respectively. And we do hereby authorise and empower the said Bishop of Australia and His Successors and his and their Commissary and Commissaries to administer all such oaths as are accustomed and by Law may be administered according to the Ecclesiastical Laws of our Realm of England and to punish and correct the aforesaid Chaplains Ministers Priests and Deacons in Holy Orders of the United Church of England and Ireland according to their demerits whether by deprivation suspension or other such Ecclesiastical censure or correction as they would be liable to according to the Ecclesiastical Laws aforesaid subject nevertheless to such right of appeal as in hereinafter given and reserved. And we will and declare that during a vacancy of the said See of Australia by the demise of the Bishop thereof or otherwise the Commissary or Commissaries appointed as aforesaid

shall continue to exercise so far as by law they may or can the jurisdictions and functions delegated to them as aforesaid until a new Bishop of the said See shall have been duly appointed and consecrated and shall have arrived within the limits of the said See. And moreover we command and by these Presents for us our Heirs and Successors do strictly enjoin all and singular our Governors Judges and Justices and all and singular Chaplains Ministers and other our Subjects within the said Colonies and Dependencies that they and every of them be in and by all lawful ways and means aiding and assisting to the said Bishop and His Successors and to his or their Commissary or Commissaries in the execution of the premises in all things. Nevertheless we will and do by these Presents declare and ordain that in all grave matters of correction which are accustomed according to the practice of the Ecclesiastical Laws of our Realm of England to be judicially examined the same shall in like manner be judicially examined and proceeded in before the said Bishop of Australia and His Successors or his or their Commissary or Commissaries aforesaid and all such causes shall be proceeded in to final sentence in due form of Law. And we do further order and direct that the said Bishop of Australia and His Successors may from time to time appoint proper and sufficient person to act as Registrar of the said Diocese and in case of no Registrar being so appointed or the said Registrar being absent or otherwise unable to act we will and direct that the said Bishop of Australia or his Commissary or Commissaries for the time being may assume any proper and sufficient person as Actuary to do all acts as Registrar and further we will and do by these Presents declare and ordain that if any person against whom a judgement or sentence shall be pronounced by the said Bishop of Australia or His Successors or by his or their Commissary or Commissaries shall conceive himself to be aggrieved thereby it shall be lawful for such person to appeal to the said Archbishop of Canterbury or His Successors provided such appeal be entered and notice thereof given to the said Bishop or His Successors within fifteen days after such judgement or sentence shall have been pronounced. And we do further will and declare and ordain that in all cases in which an appeal shall be entered and notified as aforesaid together with a copy of the evidence on which the same was founded shall without delay be certified and transmitted by the said Bishop or His Successors or his or their Commissary or Commissaries to the said Archbishop of Canterbury and such judgement or sentence shall remain in force until the same shall have been reversed by the said Archbishop of Canterbury. And we do further will and ordain that the said Supreme Court of New South Wales shall have such and the like jurisdiction and power of interfering by writ of prohibition or mandamus subject to the same Laws Restrictions and Rules of Practice as is or has been exercised by our Court of King's Bench at Westminster in regard to proceedings in the Ecclesiastical Courts in England regard being had nevertheless to any special provisions or exceptions contained in these our Letters Patent and to any other Laws and Regulations especially applicable to or concerning that part of our Dominions included in the said Diocese of Australia. Moreover it is our Royal Will and we do hereby declare and ordain that nothing in these

Presents contained shall extend or be construed to extend to repeal vary or alter the provisions of any Charter whereby Ecclesiastical Jurisdiction has been given to any Court of Judicature within our said Colonies and their Dependencies so far as the same do not appertain to the correction of Clerks or the Spiritual Superintendence of Ecclesiastical persons or to give to the said Bishop of Australia or His Successors any authority or jurisdiction whatever in matters now recognisable in the said Courts except as hereinbefore excepted. Moreover we will and grant by these Presents that the said Bishop of Australia shall be a body corporate and do ordain make and constitute him to be a perpetual corporation and to have perpetual Succession and that he and his Successors be for ever hereafter called and known by the name of the Bishop of Australia and that he and His Successors by the name aforesaid shall be able and capable in the law and have full power to purchase have take hold and enjoy Manors Messuages Lands Rents Tenements Annuities and Hereditaments of what nature or kind soever in fee and in perpetuity or for a term of life or years and also all manner of Goods Chattels and Things personal whatsoever of what nature or value soever and that he and His Successors by and under the said name may prosecute claim plead and be impleaded defend and be defended answer and be answered in all manner of Courts of us our Heirs and Successors and elsewhere in and upon all and singular causes actions suits writs and demands real and personal and mixed as well spiritual as temporal and in all other things causes and matters whatsoever and that the said Bishop of Australia and his Successors shall and may for ever hereafter have and use a Corporate Seal and the said Seal from time to time at his and their will and pleasure break change alter or make now as he or they may shall deem expedient. And we do hereby declare that if we our heirs and Successors shall think fit to recall or revoke the appointment of the said Bishop of Australia or His Successors and shall declare such our pleasure by Letters Patent under our Great Seal of our said United Kingdom then every such Bishop shall from and after the notification thereof in such manner as in the said Letters Patent shall be directed to the said Bishop of Australia to all interests and purposes cease to be Bishop of Australia. And for removing doubts with respect to the validity of resignation of the said Office of Bishop of Australia it is our further will that if the said Bishop or any of his Successors shall by instrument under his hand and seal delivered and sent to the Archbishop of Canterbury for the time being and be by him accepted or registered in the Office of Faculties of the said Archbishop resign the Office of Bishop of Australia such Bishop shall forthwith cease to be Bishop of Australia to all intents and purposes but without Prejudice to any responsibility to which he may be liable in Law or Equity in respect of his conduct in his said Office. And lastly to the end all the things aforesaid may be firmly holden and done. We will and grant to the aforesaid William Grant Broughton that he shall have our Letters Patent under our Great Seal of our said United Kingdom duly made and sealed in witness whereof we have caused these our Letters to be made Patent. Witness ourself at Westminster the eighteenth day of January in the sixth year of our reign.

DOCUMENT I

LETTERS PATENT CONSTITUTING GEORGE AUGUSTUS SELWYN BISHOP OF NEW ZEALAND.

Howley's Register, Folio 395 ff.

Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen Defender of the faith to all to whom these presents shall come, greeting. Whereas in and by certain Letters Patent under the great Seal of our said United Kingdom bearing date at Westminster the sixteenth day of November one thousand eight hundred and forty, in the fourth year of our reign, we did visit the Islands of New Zealand and all other Islands adjacent thereto and lying between the thirty-fourth degree, thirty minutes North to the forty-seventh degree, ten minutes south latitude and between the one hundred and sixty-sixth degree, five minutes to the one hundred and seventy-ninth degree of east longitude, reckoning from the Meridian of Greenwich, into a separate colony and by our said Letters Patent did declare that from thenceforward the said Island should be known and designated as the Colony of New Zealand and that the Principal Islands theretofore known as or commonly called "The Northern Island", "The Middle Island" and "Stewarts Island" should thenceforward be designated and known respectively as "New Ulster", "New Munster" and "New Leinster". And whereas the doctrine and discipline of the United Church of England and Ireland are professed and observed by a considerable part of our loving subjects residents in the said Colony of New Zealand and our aforesaid subjects are deprived of some of the Offices proscribed by the Liturgy and usage of the Church aforesaid by reason that there is not a Bishop residing or exercising Jurisdiction and Canonical Functions within the same. For remedy of the aforesaid Inconveniences, we are determined to erect the said Colony of New Zealand into a Bishop's See or Diocese to be styled the Bishopric of New Zealand. Now know ye that in pursuance of such our Royal Intention, We by these our Letters Patent under the Great Seal of our United Kingdom of Great Britain and Ireland, Do by these presents erect, Found, Make Ordain and Constitute the said Colony of New Zealand into a Bishop's See or Diocese and do declare and ordain that the same shall be styled the Bishopric of New Zealand. And to the end that this our Intention may be carried into due effect we having great confidence in the Learning Morals and Probity of our Well-beloved George Augustus Selwyn, Clerk, Master of Arts, do name and appoint him to be Bishop and ordinary Pastor of the said See of New Zealand so that the said George Augustus Selwyn shall be and be taken to be Bishop of the Bishop's See of New Zealand and may by virtue of this our Nomination and Appointment enter into and possess the said Bishop's See as the Bishop thereof without any let or impediment of us our Heirs or successors for the term of his natural life. Subject nevertheless to the right of resignation hereinafter more particularly expressed. Moreover we will and ordain by these presents that the Bishop of the said See of New Zealand

and his Successors shall be subject and subordinate to the Archiepiscopal See of Canterbury and to the Most Reverend Father in God William by Divine Providence Archbishop of Canterbury and his Successors in the same manner as any Bishop of any See within the Province of Canterbury in our Kingdom of England is under the authority of the Archiepiscopal See of the Province of Canterbury and the Archbishop thereof and we do hereby further will and ordain that every Bishop of New Zealand shall at the time of his Consecration take an oath of due obedience to the Archbishop of Canterbury for the time being as his Metropolitan in the words or to the effect following. " I, George Augustus Selwyn appointed Bishop of New Zealand do profess and promise all due obedience and reverence to the most Reverend Father in God William by divine Providence Archbishop of Canterbury Primate of all England and Metropolitan and to his Successors so help me God through Jesus Christ " which oath shall and may be ministered by the said Archbishop or Bishop ministering at such Consecration or any one of them, and to the end that all the Matters and Things herein prescribed may have their due effect. We do hereby signify to the most Reverend Father in God William Lord Archbishop of Canterbury Primate of all England and Metropolitan. That we have erected and founded the aforesaid Episcopal See of New Zealand and have named and preferred the aforesaid George Augustus Selwyn to the said Bishopric and have appointed him Bishop and Ordinary Pastor therof requiring and by the faith and love whereby he is bound unto us commanding the said William Archbishop of Canterbury forthwith to consecrate the aforesaid George Augustus Selwyn Bishop of New Zealand in manner accustomed and diligently to do and perform all other things appertaining to his office in this behalf with effect. And we do by these presents give and grant to the said George Augustus Selwyn and his successors Bishops of New Zealand full power and authority to admit into the Holy Orders of Deacon and Priest respectively any person whom he shall upon examination deem duly qualified especially for the purpose of taking upon himself the Cure of Souls or Officiating in any Spiritual Capacity within the limits of the said Diocese of New Zealand and residing therein. And we do by these presents will and ordain that Declaration of such purpose and a written engagement to perform the same under the hand of such person being deposited in the hands of such Bishop shall be held to be a sufficient Title with a view to such Ordination. And that in every such case it shall be distinctly stated in the letters of Ordination of every person so admitted to Holy Orders, that he has been ordained for the Cure of Souls within the limits of the said diocese of New Zealand only and that unless such person shall be a British subject of or belonging to our said United Kingdom of Great Britain and Ireland he shall not be required to take the Oath of Allegiance to Her Majesty. And we do hereby give and grant to the said George Augustus Selwyn and his Successors Bishops of New Zealand full power and authority to perform all the Functions peculiar and appropriate to the Office of Bishop within the limits of the said See of New Zealand but not elsewhere such Bishop and his successors having been first duly ordained or consecrated Bishop according to the form prescribed by the Liturgy of the Church of England and also by himself or themselves or by his or their Commissary or

Commissaries to exercise Jurisdiction, Spiritual and Ecclesiastical in and throughout the said See and Diocese of New Zealand according to the Ecclesiastical Laws of England which are lawfully made and received in England in the several Causes and Matters hereinafter in these Presents expressed and specified and no other, And for a declaration of our Royal Will concerning the Special Causes and Matters in which we will that the aforesaid Jurisdiction shall be exercised. We have further given and granted and do by these Presents give and grant to the aforesaid Lord Bishop of New Zealand and his Successors full power and authority by himself or themselves or by his or their Commissary or Commissaries by him or them to be thereunto especially authorised to grant Licenses to Officiate to all Ministers and Chaplains of all the Churches or Chapels or other places within the said Diocese of New Zealand wherein Divine Service shall be celebrated according to the Rites and Liturgy of the Church of England and to visit all such Ministers and Chaplains and all Priests and Deacons in Holy Orders of the United Church of England and Ireland resident in the said Diocese of New Zealand with all and all manner of Jurisdiction Power and coercion Ecclesiastical that may be requisite in the Premises as also to call before him or them or before his or their Commissary or Commissaries at such competent days hours and places whatsoever when and so often as to him or them shall seem meet and convenient the aforesaid Ministers, Chaplains Priests and Deacons in Holy Orders of the United Church of England and Ireland or any of them and to inquire by witnesses to be sworn in due form of law and by all other lawful ways and means by which the same may be best and most effectually done as well concerning their morals as their behaviour in their said offices and Stations respectively. And we do hereby authorise and empower the said Bishop of New Zealand and his Successors and his or their Commissary or Commissaries to administer all such oaths as are accustomed and by Law may be administered according to the Ecclesiastical Laws of our Realms of England and to punish and correct the aforesaid Chaplains Ministers Priests and Deacons in Holy Orders of the United Church of England and Ireland according to their Demerits by Deprivation Suspension or other such Ecclesiastical Censure or Correction as they would be liable to according to the Ecclesiastical Laws aforesaid subject nevertheless to such right of appeal as is hereinafter given and reserved. And for the further accomplishment of our Intention and for aiding the said Bishop of New Zealand according to the laws and Customs of the United Church of England and Ireland in the due and canonical superintendence of Ecclesiastical persons and affairs, we do by these presents empower the said Bishop to appoint a fit and proper person or persons to be Archdeacon or Archdeacons within his said Diocese. And we do further ordain that the said Archdeacon or Archdeacons respectively shall be subordinate and assistant to the Bishop of New Zealand and his Successors Bishops of the said See according to the Ecclesiastical Laws of this Realm and to the end that this our Intention may be carried into full effect. We do hereby give and grant to the said Bishop of New Zealand the right of Collating to the said Archdeaconry or Archdeaconries any persons whom he may select as fit and proper to fill the said Office or Offices. And we do further

give and grant to the said Bishop and his successors the Right of Collating to the said Archdeaconry or Archdeaconries from time to time as the same may respectively become vacant and for a declaration of our Royal Will and pleasure in regard to the duties and functions to be exercised by the said Archdeacon or Archdeacons and their Successors. We do hereby declare that he or they shall be within their respective Archdeaconry or Archdeaconries assisting to the Bishop of New Zealand in the exercise of his Episcopal Jurisdiction and Functions according to the duty of an Archdeacon of the Ecclesiastical Laws of our Realm of England in as full and ample manner as the same are or may be exercised by archdeacons within our Realm of England save as hereinafter accepted. And we do further will ordain and declare that the said archdeacon or archdeacons shall within their respective Archdeaconry or Archdeaconries be and be taken to be the Commissary of the said Bishop and his Successors and shall exercise jurisdiction as aforesaid according to the duty and functions of a Commissary by the Ecclesiastical Laws and we will and declare that during a Vacancy of the said See of New Zealand by the Demise of the Bishop thereof or otherwise the commissary or Commissaries appointed as aforesaid shall continue to exercise so far as by Law they may or can the jurisdiction and Functions delegated to them until a New Bishop of the said See of New Zealand shall have been duly appointed and consecrated and shall have arrived within the Limits of the said See. And moreover we command and by these presents for us our Heirs and Successors do strictly enjoin all and singular our Governors, Judges and Justices and all and singular Chaplains Ministers and other our subjects within the said Colony that they and every of them be in and by all lawful ways and means aiding and assisting to the said Bishop and his Successors and his or their Commissary or Commissaries in the execution of the Premises in all things. Nevertheless we will and do by these presents declare and ordain that in all grave matters of Correction which are accustomed according to the practice of the Ecclesiastical Laws of our Realm of England to be judicially Examined the same shall in like manner be judicially examined and proceeded in before the said Bishop of New Zealand and his Successors or his or their Commissary or Commissaries aforesaid and all such causes shall be proceeded in to final Sentence in due form of law. And we do further order and direct that the said Bishop of New Zealand and his Successors may from time to time appoint a proper and sufficient person to act as Registrar of the said Diocese and in case of no Registrar being so appointed or the said Registrar being absent or otherwise unable to act, We will and direct that the said Bishop of New Zealand or his Commissary or Commissaries for the time being may appoint any proper and sufficient person as Actuary to do all acts as Registrar. And further we will and do by these Presents declare and ordain that if any person against whom a Judgment or Sentence shall be pronounced by the said Bishop of New Zealand or his Successors or by his or their Commissary or Commissaries shall conceive himself to be aggrieved thereby it shall be lawful for the said person to appeal to the said Archbishop of Canterbury or his Successors provided such Appeal be entered and notice thereof given to the said Bishop or his Successors within fifteen days after

such Judgment or Sentence shall have been pronounced. And we do further will declare and ordain that in all cases in which an Appeal shall be entered and notified as aforesaid a Copy of the Judgment or Sentence in such case promulgated or given setting forth the causes thereof together with a copy of the Evidence on which the same was founded shall without delay be certified and transmitted by the said Bishop or his Successors or his or their Commissary or Commissaries as to the said Archbishop of Canterbury and such Judgment or Sentence shall remain in force until the same shall have been reversed by the said Archbishop of Canterbury. And we further will and ordain that the Supreme Court of Justice within the said Colony shall have such and the like jurisdiction and power of interfering by Writ of Prohibition or Mandamus subject to the same Laws, Restrictions and Rules of Practice as is or has been exercised by our Court of Queen's Bench at Westminster in regard to proceedings in the Ecclesiastical Courts of England. Regard being had nevertheless to any special Provisions or exceptions contained in these our Letters Patent and to any other Laws and regulations specially applicable to or concerning that part of our Dominions included in the said Diocese of New Zealand. Moreover it is our Will and pleasure and we do hereby declare and ordain that nothing in these presents contained shall extend or be construed to extend to repeal vary or alter the provisions of any Charter whereby Ecclesiastical Jurisdiction has been given to any Court of Judicature within our said colony so far as the same do not appertain to the Correction of Clerks or the Spiritual Superintendence of Ecclesiastical Persons or to give to the said Bishop of New Zealand or his Successors any Authority or Jurisdiction whatever in matters now depending in the said Courts except as hereinafter excepted. Moreover, we will and grant by these presents that the said Bishop of New Zealand shall be a Body Corporate and do Ordain, and make and constitute him to be a perpetual Corporation and to have perpetual Succession. And that he and his Successors be for ever hereinafter called and known by the name of Bishop of New Zealand. And that he and his Successors by the name aforesaid shall be able and capable in the Law and have full power to purchase, have, take, hold and enjoy Manors, Messuages, Lands, Tenements and Hereditiments of what nature or kind soever in Fee and in Perpetuity or for term of life or Years and also all manner of Goods, Chattels and Things personal whatsoever of what nature or kind soever and that he and his Successors by and under the said name may prosecute, claim, plead and be impleaded, defend and be defended, answer and be answered in all manner of Courts of Us our Heirs and Successors in and upon all and singular Causes, Actions, Suits, Writs and Demands real and personal and mixed as well Spiritual as Temporal and in all things Causes and Matters whatsoever—And that the said Bishop of New Zealand and his Successors shall and may for ever hereafter have and use a Corporate Seal and the said Seal from time to time at his and their Will and pleasure break, change, alter or make now as he or they shall deem expedient. And for removing doubts with respect to the validity of Resignation of the said Office of Bishop of New Zealand it is our further Will that if the said Bishop or any of his Successors shall by Instrument under his hand and seal delivered and sent to the Archbishop of Canter-

bury for time being and to be by him accepted and registered in the office of Faculties of the said Archbishop resign the office of Bishop of New Zealand such Bishop shall forthwith cease to be Bishop of New Zealand to all intents and purposes but without prejudice to any responsibility to which he may be liable in Law or Equity in respect of his conduct in the said office. And lastly to the end that all the Things aforesaid may be firmly holden and done we will and grant to the aforesaid George Augustus Selwyn that he shall have our Letters Patent under our Great Seal of our United Kingdom duly made and sealed. In Witness whereof We have caused these our Letters to be made Patent. Witness ourself at Westminster the Fourteenth day of October in the Fifth year of our Reign.

DOCUMENT J

LETTERS PATENT CONSTITUTING WILLIAM GRANT BROUGHTON METROPOLITAN OF AUSTRALASIA.

Patent Roll, 11 Vict., Part I, and *Howley's Register*, Folio 581 ff.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to all to whom these Presents shall come, greeting : Whereas his late Majesty, Our Royal Uncle, King William the Fourth, did by letters patent under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing date the 18th day of January, 1836, in the sixth year of his reign, found, ordain, constitute, and erect all the territories and islands comprised within or dependent upon Our colonies of New South Wales, Van Diemen's Land, and Western Australia into a bishop's see or diocese, and did declare and ordain that the same should be styled the Bishoprick of Australia, and that the first and other bishops thereof should be subject to the Archbishop of Canterbury for the time being as their metropolitan, and did in and by the said letters patent name and appoint William Grant Broughton, clerk, theretofore Archdeacon of New South Wales, to be bishop and ordinary pastor of the said see of Australia ; and the said William Grant Broughton was thereupon ordained and consecrated to be the bishop and ordinary pastor of the said see : And whereas in and by the said letters patent Our said Royal Uncle did declare that if he, his heirs or successors should think fit to recall or revoke the appointment of the said Bishop of Australia or his successors, and should declare such his pleasure by letters patent under the Great Seal of Our said United Kingdom, then every such bishop should, from and after the notification thereof in such manner as in the said letters patent should be directed to him to all intents and purposes cease to be Bishop of Australia : And Whereas by virtue of the powers of revocation mentioned in the said letters patent We did, with the concurrence of the said Bishop of Australia, by letters patent bearing date the 18th day of August in the year of our Lord 1842, wholly separate, divide, and exempt the city of Hobart Town, and all that Our Island of Van Diemen's Land, and all islands and territories lying to the southward of Wilson's Promontary, in 39

degrees 12 minutes south latitude, and to the northward of the 45th degree of south latitude, and between the 140th and 150th degrees of longitude east from Greenwich, and also Macquarie's Island, lying to the south-eastward of the said island of Van Diemen's Land, and all other the dependencies of Our said colony of Van Diemen's Land, and did declare that the said city and colony should thenceforth be wholly separate and exempted from the jurisdiction, authority, and diocese of the said Bishop of Australia and his successors, and did ordain, make, constitute, and declare the same to be the diocese of the Bishop of Tasmania, as by reference to the said letters patent will more fully appear: And whereas it has been represented to us by the Most Reverend Father in God, William, by Divine Providence, Lord Archbishop of Canterbury, Primate of all England, and Metropolitan, that considering the present great extent of the said diocese of Australia notwithstanding the severance therefrom of the said diocese of Tasmania, as hereinbefore mentioned, and also the inconvenience arising therefrom as well to the bishop of the said see, as to the members of the United Church of England and Ireland resident within the same, he is desirous with the concurrence of the said Bishop of Australia, that the extent of the said diocese should be still further reduced, and that the same should be divided into four several and distinct dioceses, to be styled the Bishoprick of Sydney, the Bishoprick of Newcastle, the Bishoprick of Adelaide, and the Bishoprick of Melbourne, the bishops of the said several sees of Newcastle, Adelaide, and Melbourne, and their successors, and also the Bishop of Tasmania and his successors, and the Bishop of New Zealand and his successors, to be subject and subordinate to the see of Sydney and to the bishop thereof and his successors, in the same manner as any bishop of any see within the province of Canterbury is under the authority of the archiepiscopal see of that province and the archbishop of the same: And whereas We, having taken the premises into Our Royal consideration and having been certified of the concurrence therein of the said Bishop of Australia, are persuaded that by complying with such request of the said Archbishop, we shall, under the blessing of Almighty God, greatly advance the well-being of the said United Church of England and Ireland within the said colonies and settlements, we have resolved to grant the same accordingly: Now know ye, that in pursuance of such Our Royal intention, it is Our will and pleasure, and We do by these presents revoke and determine the said letters patent made and passed in the sixth year of the reign of his said late Majesty King William the Fourth, to all intents and purposes, save and except as to all acts, matters, or things which may have been done under the authority of the same, which we will and ordain shall be and remain of the same force and effect as if the said letters patent were not revoked and determined. And We do further by these presents erect, found, ordain, and constitute all those parts or portions of Our said colony known or called by the names of the counties of Wellington, Roxburgh, Cook, Cumberland, Camden, Westmoreland, Georgiana, Bathurst, King, Murray, Argyle, and Auckland, with the territory to the west bounded by the parallel of latitude 32 degrees 30 minutes, and the 141st degree of east longitude, together with all those parts of the continent of Australia not comprised within the limits of any other see or diocese, to be a

bishop's see and diocese, and to be called from henceforth the Bishoprick of Sydney ; saving nevertheless unto Us, Our heirs and successors, the powers of altering from time to time with the consent of the Archbishop of Canterbury for the time being, if the said see be vacant, or otherwise of the said archbishop and of the bishop of the said see for the time being, the limits of the said diocese or of the jurisdiction of the bishops thereof ; and to the end that this our intention may be carried into due effect, We having great confidence in the learning, morals, probity, and prudence of the said Right Reverend Father in God, William Grant Broughton, heretofore Bishop of Australia, do by these letters patent name and appoint him to be bishop of the said see of Sydney. And We do hereby signify to the Most Reverend Father in God, William, by Divine Providence, Lord Archbishop of Canterbury, Primate of all England, and Metropolitan, the erection and constitution of the said see and diocese, and Our nomination and appointment thereto of the said Right Reverend Father in God, William Grant Broughton ; and we do ordain and declare, that the said Right Reverend Father in God, William Grant Broughton, so by Us nominated and appointed, may enter into and possess the said bishop's see as bishop thereof, without let or impediment from Us, Our heirs or successors, for and during the term of his natural life, subject nevertheless to the right of resignation hereinafter more particularly expressed. And We do further will and ordain that the said Right Reverend Father in God, William Grant Broughton, bishop of the said see of Sydney, and his successors the bishops thereof for the time being, shall be and be deemed and taken to be metropolitan Bishop of Australasia (subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury for the time being, and subordinate to the archiepiscopal see of the province of Canterbury) ; and We will and ordain that the said bishops of Newcastle, Adelaide, and Melbourne, and also the Bishop of Tasmania respectively, shall be suffragan bishops to the Bishop of Sydney and his successor ; and We further will and ordain, that the said Bishop of New Zealand and his successors shall also become suffragan bishops to the said Bishop of Sydney and his successors, in such manner and at such time as We or Our successors shall hereafter, with the consent of the said Bishop of New Zealand, or upon a vacancy of the said see, be pleased by letters patent under the Great Seal of Our said United Kingdom, to order and direct ; and We will and grant to the said Bishop of Sydney and his successors full power and authority, as Metropolitan of Australasia, to perform all functions peculiar and appropriate to the office of metropolitan within the limits of the said sees of Newcastle, Adelaide, Melbourne, and Tasmania, and also within the limits of the said see of New Zealand, whenever We shall as aforesaid be pleased to order and direct, and to exercise metropolitan jurisdiction over the bishops of the said sees and their successors, and over all archdeacons, dignitaries, and all other chaplains, ministers, priests, and deacons in holy orders of the United Church of England and Ireland, within the limits of the said dioceses. And We do by these presents give and grant unto the said Bishop of Sydney and his successors full power and authority to visit, once in five years, or oftener if occasion shall require, as well the said several bishops and their successors as all archdeacons

and dignitaries, and all other chaplains, ministers, priests, and deacons in holy orders of the United Church of England and Ireland, resident in the said dioceses, for correcting and supplying the defects of the said bishops and their successors, with all and all manner of visitorial jurisdiction, power, and coercion. And We do hereby authorise and empower the said Bishop of Sydney and his successors to inhibit, during any such visitation of the said dioceses, the exercise of all or of such part or parts of the ordinary jurisdiction of the said bishops or their successors as to him the said Bishop of Sydney or his successors shall seem expedient; and during the time of such visitation to exercise by himself or themselves, or his or their commissaries, such powers, functions, and jurisdictions in and over the said dioceses as the bishops thereof might have exercised if they had not been inhibited from exercising the same. And We do further ordain and declare that if any person against whom a judgment or decree shall be pronounced by the said bishops or their successors or their commissary or commissaries, shall conceive himself to be aggrieved by such sentence, it shall be lawful for such person to appeal to the said Bishop of Sydney or his successors, provided such appeal be entered within 15 days after such sentence shall have been pronounced; and We do give and grant to the said Bishop of Sydney and his successors full power and authority finally to decree and determine the said appeals. And We do further will and ordain that in case any proceedings shall be instituted against any of the said Bishops of Newcastle, Adelaide, Melbourne, Tasmania, and New Zealand, when placed under the metropolitical see of Sydney, such proceedings shall originate and be carried on before the said Bishop of Sydney, whom we hereby authorize and direct to take cognizance of the same. Moreover, We will and grant by these presents that the said Bishop of Sydney shall be a body corporate, and do ordain, make and constitute him to be a perpetual corporation, and to have perpetual succession, and that he and his successors be for ever hereafter called and known by the name or title of the Lord Bishop of Sydney, and that he and his successors by the name or title aforesaid shall be able and capable in the law, and have full power to purchase, have, take, hold, and enjoy manors, messuages, lands, tenements, annuities, and hereditaments, of what nature or kind soever, in fee or in perpetuity, or for a term of life or years, and also all manner of goods, chattels, and things personal whatsoever, of what nature or value soever, and that he and his successors, by and under the said name or title, may prosecute, claim, plead and be impleaded, defend and be defended, answer and be answered, in all manner of courts of Us, Our heirs and successors, and elsewhere, in and upon all and singular causes, actions, suits, writs, and demands, real and personal, and mixed, as well spiritual as temporal, and in all other things, causes, and matters whatsoever; and that the said Bishop of Sydney and his successors shall and may for ever hereafter have and use a corporate seal, and the said seal from time to time, at his and their will and pleasure, break, change, alter, or make anew, as he or they shall deem expedient. And We are moreover pleased to order and direct that the said Bishop of Sydney under that title may take up, continue, and proceed with every act or engagement lawfully commenced, done, or entered into as Bishop of Australia,

under the letters patent heretofore granted to him as bishop of the said see of Australia. And We do hereby further ordain and declare that the church called Saint Andrew's, in the city of Sydney aforesaid, shall henceforth be the cathedral church and see of the said Right Reverend Father in God William Grant Broughton and his successors, Bishops of Sydney. And We do further by these presents expressly declare, that the said Bishop of Sydney and his successors, having been respectively by Us, Our heirs and successors named and appointed, and by the said Archbishop of Canterbury for the time being, as metropolitan of the said see, canonically ordained and consecrated according to the form and usage of the United Church of England and Ireland, may perform all the functions peculiar and appropriate to the office of bishop within the said diocese of Sydney. And We do by these presents further declare, that the aforesaid Bishop of Sydney and his successors may exercise and enjoy full power and authority by himself or themselves, or by the archdeacon or archdeacons, or the vicar-general, or other officer or officers hereinafter mentioned, to give institution to benefices, to grant licenses to officiate to all rectors, curates, ministers, and chaplains of all the churches or chapels, or other places within the said diocese wherein Divine service shall be celebrated according to the rites and liturgy of the Church of England, and to visit all rectors, curates, ministers, and chaplains, and all priests and deacons in holy orders of the United Church of England and Ireland resident within the said diocese; and also to call before him or them, or before the archdeacon or archdeacons, or the vicar-general, or other officer or officers hereinafter mentioned, at such competent days, hours, and places, when and so often as to him or them shall seem meet and convenient, the aforesaid rectors, curates, ministers, chaplains, priests, and deacons, or any of them, and to inquire as well concerning their morals as their behaviour in their said offices and stations respectively, subject nevertheless to such rights of review and appeal as are hereinafter given and reserved; and for the better accomplishment of the purposes aforesaid, We do hereby grant and declare that the said Bishop of Sydney and his successors may found and constitute one or more dignities in his said cathedral church, and also one or more archdeaconries within the said diocese, and may collate one or more fit and proper persons to be dignitaries of the said cathedral church, and also one or more fit and proper persons to be the archdeacons of the said archdeaconries respectively: Provided always, that such dignitaries and archdeacons shall exercise such jurisdiction only as shall be committed to them by the said bishop or his successors, and the said bishop and his successors may also from time to time nominate and appoint fit and proper persons to be respectively the officers hereinafter mentioned; that is to say, to be vicar-general, official principal, chancellor, rural deans, and commissaries, either general or special, and may also appoint one or more fit and proper persons to be registrars and actuaries: Provided always, that the said dignitaries and archdeacons aforesaid shall be subject and subordinate to the said Bishop of Sydney and his successors, and shall be assisting to him and them in the exercise of his and their episcopal jurisdiction and functions. And We will and declare that during a vacancy of the said see of Sydney by the demise of the bishop thereof or otherwise, the said

dignitaries and archdeacons, and the said vicar-general and other officers respectively appointed as aforesaid, shall continue to exercise, so far as by law they may or can, the jurisdiction and functions delegated to them, and that the said registrars and actuaries shall respectively continue to discharge the duties whereunto they have been appointed until a new bishop of the said see of Sydney shall have been nominated and consecrated, and his arrival within the limits of the said diocese shall have been notified to the said parties respectively. And We further will and do, by these presents declare and ordain, that it shall be lawful for any party against whom any judgment, decree, or sentence shall be pronounced by any of the said archdeacons, or by the vicar-general, or other officer or officers of the said bishop or his successors, to demand a re-examination and review of such judgment, decree, or sentence before the bishop or his successors in person, who upon such demand made shall take cognizance thereof, and shall have full power and authority to affirm, reverse, or alter the said judgment, sentence, or decree; and if any party shall conceive himself aggrieved by any judgment, decree, or sentence pronounced by the said Bishop of Sydney or his successors, either in case of such review or in any cause originally instituted before the said bishop or his successors, it shall be lawful for the said party to appeal to the said Archbishop of Canterbury or his successors, who shall finally decide and determine the said appeal: Provided always, that in any such case of appeal or review, notice of the intention of the party to make such appeal or demand such review shall be given to the bishop or subordinate judge by whom the sentence appealed from or to be reviewed shall have been pronounced within fifteen days from the promulgation thereof. And We do further will and by these presents ordain, that in all cases in which an appeal shall be made or review demanded as aforesaid, a copy of the judgment or sentence in such case promulgated or given, setting forth the causes thereof, together with a copy of the evidence on which the same was founded, shall without delay be certified and transmitted by such subordinate judge to the said bishop or his successors, or by the said bishop or his successors to the said Archbishop of Canterbury, as the case may require. Moreover, it is Our will and pleasure, and We do hereby declare and ordain, that nothing in these presents contained shall extend, or be construed to extend, to repeal, vary, or alter the provisions of any charter whereby ecclesiastical jurisdiction has been given to any court of judicature within the limits of the said diocese. And for removing doubts with respect to the validity of the resignation of the said office and dignity of Bishop of Sydney, it is Our further will that if the said bishop or any of his successors shall by instrument under his hand and seal delivered and sent to the Archbishop of Canterbury for the time being, and by him accepted and registered in the Office of Faculties of the said Archbishop, resign the office and dignity of Bishop of Sydney, such bishop shall, from the time of such acceptance and registration, cease to be Bishop of Sydney to all intents and purposes, but without prejudice to any responsibility to which he may be liable in law or equity in respect of his conduct in his said office. And lastly, to the end that all things aforesaid may be firmly holden and done, We will and grant to the aforesaid William Grant Broughton that

he shall have Our letters patent under Our Great Seal of Our said United Kingdom made and sealed. In witness, &c., the 25th day of June, in the 11th year of our Reign.

By Writ of Privy Seal.

DOCUMENT K

MINUTES OF PROCEEDINGS OF A MEETING OF THE METROPOLITAN AND SUFFRAGAN BISHOPS OF THE PROVINCE OF AUSTRALASIA, HELD IN SYDNEY, OCTOBER 1 TO NOVEMBER 1, A.D. 1850.

Report.—The Metropolitan and Bishops of the Province of Australasia, having by the good Providence of God, been permitted to assemble themselves together in the Metropolitan City of Sydney, on the 1st day of October, in the year of our Lord 1850, and having consulted together on such matters as concern the progress of true Religion, and the welfare of the Church in the said Province and in the several Dioceses thereof, did agree to the decisions and opinions contained in the following Report :—

Order of Subjects

1. Objects of the Conference. 2. Canons of A.D. 1603–4. 3. Future Synods and Conventions, Provincial and Diocesan. 4. Church Membership. 5. Discipline : (1) Bishops and Clergy, (2) Laity. 6. Status of Clergy. 7. Liturgy : Decisions and Opinions concerning—(1) Division of Services ; (2) The Administration of Holy Communion ; (3) The Occasional Offices ; (4) Service for Saint's Day falling on a Sunday ; (5) Persons prayed for ; (6) Persons returning thanks ; (7) The Offertory ; (8) Sponsors ; (9) Marriage (*a*) within prohibited degrees, (*b*) of persons not Members of the Church, (*c*) Irregularly solemnised, (*d*) Caution to be used ; (10) Churching of Women ; (11) Claim to the Offices of the Church. 8. Holy Baptism. 9. Educational : (1) Schools, (2) University. 10. Board of Missions.

I. Objects of the Conference

We, the undersigned Metropolitan and Bishops of the Province of Australasia, in consequence of doubts existing how far we are inhibited by the Queen's Supremacy from exercising the powers of an Ecclesiastical Synod, resolve not to exercise such powers on the present occasion.

But we desire to consult together upon the various difficulties in which we are at present placed by the doubtful application to the Church in this Province of the Ecclesiastical Laws, which are now in force in England ; and to suggest such measures as may seem to be most suitable for removing our present embarrassments ; to consider such questions as affect the progress of true religion, and the preservation of Ecclesiastical order in the several Dioceses of this Province—and finally, in reliance on Divine Providence, to adopt plans for the propagation of the Gospel among the Heathen

races of Australasia, and the adjacent islands of the Western Pacific.

We request The Right Reverend The Lord Bishop of Newcastle to act as our Secretary, and to embody our resolutions in a Report, to be transmitted to the Archbishops and Bishops of the United Church of England and Ireland.

W. G. Sydney.	Augustus Adelaide.
G. A. New Zealand.	C. Melbourne.
F. R. Tasmania.	W. Newcastle.

II. Canons of A.D. 1603–4

We are of opinion that the Constitutions and Canons agreed upon with the King's Majesty's license, in the Synod begun at London, A.D. 1603, and published for the due observation of them by His Majesty's authority, under the Great Seal of England, form part of the established Constitution of our Church, and are generally binding upon ourselves, and the clergy of our respective Dioceses.

Where they cannot be literally complied with, in consequence of the altered state of circumstances since the enactment of the Canons, we are of opinion that they must be, as far as possible, complied with in substance.

We concur also in thinking that a revisal and fresh adaptation of the Canons to suit the present condition of the Church is much to be desired, so soon as it can be lawfully undertaken by persons possessing due authority in that behalf.

W. G. Sydney.	Augustus Adelaide.
G. A. New Zealand.	C. Melbourne.
F. R. Tasmania.	W. Newcastle.

III. Future Synods and Conventions, Provincial and Diocesan

We are of opinion that there are many questions of great importance to the well-being of the Church in our Province, which cannot be settled without duly constituted Provincial and Diocesan Synods.

Without defining the exact meaning of the word Synod as used in the Church of England, whenever the words " Provincial Synod " or " Diocesan Synod " shall be used in the following resolutions, we understand a body composed of one or more Bishops, with representatives chosen from among the clergy, meeting at such times and in such manner as may not be inconsistent with any Law of Church or State.

We understand the Functions of Provincial and Diocesan Synods to be these :

1. To consult and agree upon Rules of Practice and Ecclesiastical Order within the limits of the Province or Diocese.

2. To conduct the processes necessary for carrying such rules into effect. But not to alter the Thirty-nine Articles, the Book of Common Prayer, or the Authorised version of the Holy Scriptures.

(2) *Sub-division of Dioceses and Consecration of Bishops*

1. We are of opinion that it appertains to a Provincial Synod, with the concurrence of the Diocesan Synod, from time to time, to

decide upon plans for such sub-division of Dioceses as may be necessary for the more efficient discharge of the Episcopal duties, and to recommend those plans for adoption in accordance with the Laws which shall be in force at the time.

2. We submit that no sub-division of any Colonial Diocese should be determined on in England without previous communication with the Bishop of that Diocese, in order that the proposed measures may be laid before the Diocesan and Provincial Synods, before they be finally adopted.

3. We would further express our opinion, that if the Provincial Synod should recommend a Colonial Clergyman for appointment to fill a new or vacant See, the recommendation should be favourably considered by the authorities in England, and that the person designated to such See should, in conformity with ancient practice, be consecrated by the Metropolitan and Bishops of the Province, unless grave inconvenience be likely to ensue.

(3) *Provincial and Diocesan Conventions.*

1. We are of opinion that the Laity acting by their Representatives duly elected, should meet in Diocesan and Provincial Conventions simultaneously with the Diocesan and Provincial Synods, that the Clergy and Laity may severally consult and decide upon all questions affecting the temporalities of the Church, and that no act of either order relating thereto should be valid without the consent of the other.

2. That any change of Constitution affecting the whole body of the Church should be first proposed and approved in the Provincial Synod, but should not be valid without the consent of the Provincial Convention.

W. G. Sydney. Augustus Adelaide.
G. A. New Zealand. C. Melbourne.
F. R. Tasmania. W. Newcastle.

IV. Church Membership

We acknowledge as Members of the Church of England all persons who, having been duly baptised with water, in the name of the Father, Son and Holy Ghost, are conformable to the Doctrine, Government, Rites and Ceremonies, contained in the Book of Common Prayer; it being understood that they are entitled to claim at the hands of its Ministers the rites and ceremonies of our Church, so long only as they shall continue conformable to the extent above required.

By a Member of the Church of England in full communion, we understand every one, who being conformable as aforesaid, is a partaker of the Holy Communion, as required by the rules of the Church.

While we would leave the Synods and Conventions, which may hereafter be appointed, to fix the qualifications of electors, we would express our decided conviction that all persons elected to serve as members of Diocesan and Provincial Conventions should be members of the Church in full communion.

W. G. Sydney. Augustus Adelaide.
G. A. New Zealand. C. Melbourne.
F. R. Tasmania. W. Newcastle.

V. Discipline

(1) *Bishops and Clergy*

In consequence of statements which have been made in various places, of the arbitrary power possessed by Bishops to suspend or revoke at their own discretion the licences of clergymen, we disclaim all wish to exercise any such power, and we are of opinion, that in all cases of doctrinal error, or other ecclesiastical offences, the Bishops of the Province should be the Court for the trial of a Bishop, and that the Diocesan Synod should be the Court for the trial of a Presbyter or Deacon, and that the Metropolitan and the Bishop of the Diocese respectively should be ex-officio Presidents of such Courts, either in person, or by their Commissaries.

Further, it would appear to be necessary that any Bishop or other Clergyman suspended or deposed by due sentence of the Court, should be legally incapable of continuing to hold possession of any Church, Chapel, Stipend, House, Glebe, or other temporalities, which he may have held by virtue of his office.

We are also of opinion that the form of procedure in all cases of Appeal requires to be defined.

(2) *Laity*

Bearing in mind the wish expressed in the Commination Service, that the Godly discipline of the Primitive Church may be restored, we are of opinion:

That it is the duty of every Church to seek by spiritual admonitions to reclaim those of its members who are living in notorious sin.

We therefore hold it to be the duty of every clergyman having cure of souls, privately to admonish all evil-doers among those committed to his charge, " as needs shall require, and occasion shall be given." We would also remind the Lay Members of the Church, that the Clergy are required by the Rubric to repel from the Holy Communion all persons who are living in sin so open and notorious as that the congregation is thereby offended, and who after due admonitions shall continue impenitent, and without amendment of life.

Provided always, that every Minister so repelling any shall give an account of the same to the Bishop of the Diocese within fourteen days after, at the farthest. And we are of opinion, that it is the duty of the Bishop earnestly to admonish every person so repelled to qualify himself by repentance for readmission to Holy Communion.

Until the establishment of a form of process by a Provincial Synod with the concurrence of a Provincial Convention, we are of opinion that in cases where all spiritual admonitions have failed to reclaim members of the Church, who are living in notorious sin, it may become the duty of the Bishop, with the aid and concurrence of his Presbyters, to pronounce such persons excommunicate so far as to release any clergyman from the obligation to use the burial service, if they should die without sufficient proof of repentance.

But remembering the solemn charge which we have received at our consecration, to " bind up the broken, to bring again the outcasts, to seek the lost, to be so merciful as not to be too remiss, and so to minister discipline that we forget not mercy," we are of opinion

that it is our duty, as in every case, so especially in those which have been here noticed, to use faithful and affectionate admonition before we proceed to any strict exercise of the discipline of the Church.

W. G. Sydney. Augustus Adelaide.
G. A. New Zealand. C. Melbourne.
F. R. Tasmania. W. Newcastle.

VI. Status of Clergy

1. We desire to express our opinion, that no clergyman who shall have been duly appointed and licensed to any Church or permanent cure of souls, should be removable therefrom, except by sentence pronounced, after judicial inquiry, before the Diocesan Synod.

2. That this rule should not apply to those clergymen who have been appointed and licensed by the Bishop to any charge expressly understood to be of a temporary nature.

3. At the same time we consider it to be most desirable in the present state of the Church of England in our Dioceses, that candidates for Holy Orders should devote themselves to the service of the Church, in that willing spirit which would induce them to place themselves at the disposal of their Bishop for some definite term of years, and leave to him the responsibility of appointing and changing their station during such period.

W. G. Sydney. Augustus Adelaide.
G. A. New Zealand. C. Melbourne.
F. R. Tasmania. W. Newcastle.

VII. Liturgy

(1) *Division of Services*

We are of opinion that the Bishop of each Diocese, as Ordinary has a discretion to authorise clergymen, in cases of necessity, to divide the morning service, by using either the Morning Prayer, the Litany, or the Communion Service separately; but that each of the services so used should be read entire.

(2) *The Administration of Holy Communion*

In parishes where the number of communicants is very great, the Communion Service may be used separately, and the Lord's Supper administered at an early hour, besides the usual administration at the morning service.

In places where there is no morning service, the administration of the Holy Communion may be in the afternoon if necessity so require.

When the Holy Communion cannot be administered in a Church, or other building duly licensed for the celebration of Divine Service, it may be administered in such places as necessity shall require.

(3) *Occasional Service*

We are of opinion that no clergyman has authority at his own, discretion to abridge or alter any of the occasional services of the, Church.

(4) *Rules for Service on Saints' Days falling on Sundays, etc.*

Should a Saint's Day fall on Ash Wednesday, Good Friday, or Easter Eve, or on Easter Sunday, Ascension Day, Whit Sunday, or

Trinity Sunday, or on Monday or Tuesday in Easter and Whitsun weeks, the Lessons, Collect, Epistle, and Gospel for those days are to be used.

When a Saint's Day shall fall on any other Sunday, the Lessons of the Saint's Day (unless they be from the Apocrypha) are to be used, and the Collect, Epistle, and Gospel for the Saint's Day, with the Collect for the Sunday.

(5) *Of Persons for whom the Prayers of the Congregation are desired*

It is convenient that the names of the persons for whom the prayers of the congregation are desired should be mentioned either before the Litany or before the Prayer for all conditions of men, as the case may be.

The words, " especially those for whom our prayers are desired," may be inserted in the Litany in their appropriate place.

(6) *Thanksgiving Service*

It is convenient that the names of the persons who desire to return thanks should be mentioned before the General Thanksgiving.

The words, " particularly to those who desire now to offer up their praise and thanksgivings for thy late mercies vouchsafed unto them," may be used for persons who have not been specially prayed for.

(7) *Offertory*

We are of opinion that no clergyman can justly be suspected of holding opinions at variance with the sound teaching of the Church, in consequence of his complying with the Rubric, which directs " that upon the Sundays and other Holy Days (if there be no Communion) shall be said all that is appointed at the Communion, until the end of the General Prayer (for the whole of Christ's Church Militant here on earth), together with one or more of the Collects, concluding with the blessing."

(8) *Sponsors*

Being aware that the Clergy have felt the great importance of having duly qualified Sponsors at Holy Baptism, we recommend that the most earnest endeavours be used by them to convey correct impressions upon that subject to their several flocks, in the hope that suitable persons may be in all cases provided to discharge the duties of that office.

(9) *Marriage*

(a) *Within Prohibited Degrees*

Inasmuch as it is directed by the 99th Canon, that " no person shall marry within the degrees prohibited by the laws of God, and expressed in a Table set forth by authority, in the year of our Lord God 1563 " ; we are of opinion that any clergyman of the Province, who shall solemnise matrimony between persons so related, will be acting in violation of the Law of the Church.

Referring also to Canons 26 and 109, and to the Rubrics prefixed to the Communion Service, we are further of opinion that persons so marrying within the prohibited degrees are liable to be repelled from the Holy Communion until they have repented and be reformed.

(b) *Of Persons neither of whom belongs to the Church*

We are of opinion that Ministers of the Church of England ought not to solemnise marriage between persons neither of whom is of

our own communion, except in cases where the marriage cannot, without extreme difficulty, be solemnised in any other way.

(c) *Irregularly Solemnised*

While we recognise the validity of all marriages contracted in conformity with the laws of the State, provided that they be not contrary to the laws of the Church, we would earnestly impress upon all members of the Church of England the duty of having their marriages solemnised according to the rites of the Church, and in no other way.

(d) *Caution to be used*

1. We desire to draw the attention of the Clergy to the necessity of exercising due caution before they proceed to solemnise marriage.

2. We therefore recommend that the banns be thrice published, except in case of marriage by licence, once at least in the licensed place of worship which is nearest to the residence of the parties desiring to be married.

3. And that the Registers of Marriage, Baptism, and Burial be accurately kept, and copies sent at the times required by Law.

(10) *Churching of Women*

We are of opinion, from the Rubric at the end of the service for the Churching of Women, that that service is not intended to be used for persons who are living in such a state as would justify the Minister in repelling them from the Holy Communion.

(11) *Ministering to Dissenters*

We are of opinion that the general principle of Colonial Legislation, by which the equality of all religious denominations is recognised, releases the Clergy of the Church of England in these colonies from the obligation to perform religious services for persons who are not members of our own Church.

W. G. Sydney. Augustus Adelaide.
G. A. New Zealand. C. Melbourne.
F. R. Tasmania. W. Newcastle.

VIII. Holy Baptism

As Bishops engaged in the charge of extensive Dioceses, and debarred from frequent opportunities of conference, we do not presume to think that we can inform or guide the judgment of the Church at large ; but at a time when the minds of pious and thoughtful men are in perplexity, we cannot remain altogether silent, nor refrain from stating what we believe to be the just interpretation of the Creed, Articles, and Liturgy of the Church of England respecting the Regeneration of Infants in Holy Baptism.

We believe Regeneration to be the work of God in the Sacrament of Baptism by which infants baptised with water, in the name of the Father, Son, and Holy Ghost, die unto sin, and rise again unto righteousness, and are made members of Christ, children of God, and inheritors of the Kingdom of Heaven.

We believe this regeneration to be the particular grace prayed for, and expected, and thankfully acknowledged to have been received in the baptismal services.

We believe that it is the doctrine of our Church that all infants do

by baptism receive this grace of regeneration. But remembering the words of our Lord instituting the Holy Sacrament of Baptism (Matt. xxviii. 19, 20), which enjoin that they who are baptised are to be made disciples and to be taught, we are of opinion that whensoever an infant is baptised, an assurance ought to be given at the same time on its behalf (by some one or more baptised persons) that it will be brought up in the faith of Christ.

We do not recognise in the infant itself any unfitness which disqualifies it from receiving in baptism this grace of regeneration, for our Lord Jesus Christ does not deny His grace and mercy unto such infants, but most lovingly doth call them unto Him.

We do not believe that unworthiness in Ministers, Parents, or Sponsors, hinders this effect of the love of Christ.

We believe that a wilful neglect of the means of grace does not prove that the gift of regeneration was never received, but in those who so fall away after baptism, we believe that the consequence of their having been regenerated is to aggravate their guilt.

Finally, we would express, First, our cordial and entire agreement with the Articles and Formularies of our Church, in their plain and full meaning, and in their literal and grammatical sense. Secondly, our willing disposition to accept and use them all in the manner which is appointed; and, with especial reference to our present subject, to carry on the work of Christian education in the firm belief that infants do receive in baptism the grace of regeneration. Thirdly, above all, we would express our unfeigned thankfulness to Almighty God for the gift and preservation of these inestimable blessings.

W. G. Sydney. Augustus Adelaide.
G. A. New Zealand. W. Newcastle.
F. R. Tasmania.

Holy Baptism

Upon this subject the Bishop of Melbourne preferred to state his views as follows:

The doctrine of our Church concerning the nature and efficacy of Holy Baptism may, in my opinion, be stated in the eight following propositions.

1. Regeneration is that operation of the Spirit of God upon the heart, which produces a death unto sin, and a new birth unto righteousness. By regeneration we are made members of Christ, children of God, and inheritors of the Kingdom of Heaven.

2. Baptism is the sacrament of regeneration, which is the particular race prayed for, expected, and thankfully acknowledged to have een received in the baptismal service.

3. The work of regeneration is wrought in all, whether they be adults or infants, who receive baptism rightly (Art. xxvii.), but in none others (Art. xxv.).

4. The Church in her office for the baptism of infants, and in that for the baptism of adults, uses the language of faith and hope, and is not to be understood as declaring positively a fact which it cannot certainly know, viz. that every baptised infant, or every baptised adult, is regenerate.

5. The statement put into the mouth of a catechumen, that he was in baptism made a member of Christ, etc., is to be understood

in the same qualified application as the declaration which almost immediately follows, that by God's help he will do as his godfathers and godmothers had promised for him, and that he heartily thanks his heavenly Father that He hath called him, etc.

6. Repentance and faith are required of those who come to be baptised, but the Church is silent as to the fitness, or unfitness, of an infant, who is incapable of repentance and faith, for receiving regeneration in baptism.

7. The unworthiness of a Minister does not take away the effect of baptism, either in the case of adults or infants (Art. xxvi.).

8. Parents are nowhere mentioned in the Articles, or in the baptismal service, but infants are baptised, because they promise repentance and faith by their sureties. These sureties or sponsors, are to be duly qualified persons, and no one is to be admitted godfather or godmother before the said person so undertaking has received the Holy Communion (Canon xxix.). The Church, however, has not positively affirmed that the unworthiness of sponsors disqualifies an infant for receiving the grace of baptism.

The truth of the following four additional propositions may also, I think, be gathered from the Scriptures, and is perfectly consistent with the general tenor of the Articles and Formularies of our Church, viz.:

9. Sponsors, who themselves repent and believe, may and ought to expect most confidently the grace of regeneration for the children whom they bring to be baptised.

10. While the Church may, and ought to, use the language of faith and hope respecting all infants brought to be baptised, impenitent and unbelieving sponsors are not entitled to expect any blessing from an ordinance which they only profane.

11. Children who have been baptised are to be taught to regard God as their Father, and to love and trust in Him as having redeemed them by His Son, and sanctified them by His Spirit—to pray that being regenerate, and made the children of God, by adoption and grace, they may daily be renewed by the Holy Ghost (Collect for Christmas Day), to consider the guilt of any sins which they may commit against God, as aggravated by their having been baptised, and brought up in the faith of the Gospel.

12. Our own personal repentance and faith are the only sure evidence of our being spiritually the children of God.

Having thus stated my own views of the doctrine of our Church concerning Holy Baptism, I would unite with my Right Reverend Brethren in expressing

1. My cordial and entire agreement with all the Articles and Formularies of our Church in their plain and full meaning, and in their literal and grammatical sense.

2. My willing disposition to accept and use them in the manner which is appointed; and (with especial reference to our present subject) to carry on the work of Christian education in the firm belief that infants do receive in baptism the grace of regeneration.

3. Above all, my unfeigned thankfulness to Almighty God for the gift and preservation of these inestimable blessings.

C. Melbourne.

IX. Education

(1) *Schools*

We cannot incur the responsibility of seeming to countenance any system of erroneous, defective, or indefinite religious instruction by incorporating ourselves with the Boards, either general or local, which have the regulation and superintendence of schools so conducted.

But wherever a Church of England School cannot be established, the Clergy, after communication with the Bishop, should consider it their duty to remedy, as far as possible, the evils or defects of any schools to which Church children may be sent by their parents.

(2) *University*

We are of opinion that the establishment of the University of Sydney may promote the growth of sound learning, and may in many ways assist the Collegiate Institutions of the Church of England in our respective Dioceses.

But while we are not unwilling that the Students in our Diocesan Colleges and Schools should compete with all other classes of Students in such public University examinations, on general literature and science, as may be established by a Senate, appointed under ordinance of the Colonial Legislature, we should decidedly object to any University system which might have the effect of withdrawing from our own Collegiate rules the students educated in our separate Diocesan Institutions.

W. G. Sydney.	Augustus Adelaide.
G. A. New Zealand.	C. Melbourne.
F. R. Tasmania.	W. Newcastle.

X. Australasian Board of Missions

The objects of the Australasian Board of Missions are two-fold—Domestic and Foreign.

1. Domestic.—The conversion and civilisation of the Australian Blacks.

2. Foreign.—The conversion and civilisation of the Heathen races in all the Islands of the Western Pacific.

The difficulties to be expected in this work, perhaps to a greater extent than in other Missions, are—

1. The low state of barbarism in which these races now are.

2. In the Australian blacks the unsettled habits of the race.

3. The multiplicity of languages and dialects throughout the whole field of operations.

4. The unhealthiness of many of the Australasian Islands in certain seasons of the year, especially from January to April.

These peculiar difficulties must be met by a plan of Missionary action deviating in many respects from the practice of other Missions.

1. The low state of barbarism in which these races now are seems to require that a select number should be brought under the most careful training at a distance from their own tribes.

2. The unsettled habits of the Australian blacks require the same corrective, and further suggest the necessity of providing religious instruction for them rather by means of visiting Missionaries than by fixed Mission stations.

3. The multiplicity of languages makes it necessary to conduct instruction in some one language common to all, which must be English.

4. The unhealthiness of many of the islands makes it advisable that Missionary action should be carried on rather by long visits of the English Missionaries during the healthy season, than by the occupation of permanent Mission stations.

W. G. Sydney.	Augustus Adelaide.
G. A. New Zealand.	C. Melbourne.
F. R. Tasmania.	W. Newcastle.

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THE VICTORIA CHURCH CONSTITUTION ACT.

18 Victoriæ No. 45.

AN ACT

TO ENABLE THE BISHOPS CLERGY AND LAITY OF THE UNITED CHURCH OF ENGLAND AND IRELAND IN VICTORIA TO PROVIDE FOR THE REGULATION OF THE AFFAIRS OF THE SAID CHURCH.

30th November, 1854.

Preamble.

WHEREAS it is expedient to provide for the regulation and management of the affairs of the United Church of England and Ireland in Victoria. Be it therefore enacted by His Excellency the Lieutenant-Governor of Victoria by and with the advice and consent of the Legislative Council thereof as follows :

Assembly may be convened.

1. It shall be lawful for any Bishop of the United Church of England and Ireland in Victoria to convene an Assembly of the Licensed Clergy and the Laity of such Church in his Diocese and the Bishop or in his absence a Commissary appointed in writing by him shall preside in such Assembly.

Regulations of Assembly binding on Bishops Clergy and members of Church.

2 .Every Regulation Act and Resolution of such Assembly made by the Bishop and the Clergy and Laity thereat respecting the affairs of the said Church including all advowson and right of patronage shall be binding on every such Bishop and his successors and on the Clergy and lay members of the said Church residing within the Diocese for which such Assembly shall have been convened and on none other and on them only so far as such regulation Act or resolution may concern the positions rights duties and liabilities of any Minister or Member of the said United Church or any person in communion therewith in regard of his ministry membership or communion or may concern the advowson or right of patronage in or management of the property of the said Church. Provided that no such regulation Act or resolution shall be valid except it be made with the concurrence of a majority both of the Clergy and of the Laity the votes of the Clergy and those of the Laity being separately taken and except it receive the assent of the Bishop.

3. It shall be lawful for any such Assembly by any regulation Act or resolution as aforesaid to establish a Commission for the trial of all Ecclesiastical offences and also to frame rules for the conduct management and mode of proceeding in and under such Commission and all such rules from time to time to vary alter and repeal. And such Commission shall be so constituted as such Assembly may deem expedient. Provided that no such Commission or any person acting thereunder shall by virtue of this Act have or exercise any jurisdiction over persons who are not Clergymen of the said United Church of England and Ireland and provided also that such Commission and the persons acting thereunder shall report to the Bishop within whose Diocese any such offence shall occur their opinion of the matters referred to them and the penalty which they would recommend to be imposed which penalty the Bishop shall not have the power to exceed.

Assembly may establish a Commission.

4. It shall not be lawful by any regulation Act or resolution of any such Assembly nor by the sentence of any Commission as aforesaid or any person acting thereunder to impose any penalty or disability other than such as may be consequent upon a sentence of suspension from or deprivation of any Ecclesiastical office or Benefice or may affect such advowson right of patronage or property as aforesaid.

Powers of Assembly and Commission.

5. No regulation of any such Assembly which shall affect any right of appeal to Her Majesty in Council or to the Archbishop of Canterbury or to the Metropolitan of the province or the subordination of the said Bishops Clergy and Laity to the Metropolitan or to the said Archbishop shall be valid unless the consent of the said Archbishop or of the said Metropolitan thereto be previously or thereafter signified by him under his hand and seal nor unless such regulation be confirmed by an order of the Archbishop of Canterbury and no regulation Act or resolution made or passed at any Assembly shall be valid which shall alter or be at variance with the authorised standards of faith and doctrine of the United Church of England and Ireland or shall alter the oaths declarations and subscriptions now by law or canon required to be taken made and subscribed by persons to be consecrated ordained instituted or licensed within the said Church.

Regulations of Assembly not to affect right of appeal etc.

6. No regulation Act or resolution of any such Assembly shall be contrary to the statute conferring a Constitution on Victoria or to any Act of the Legislature of Victoria or have legal force or validity as against any such Act.

Regulations of Assembly not to be contrary to Act of Council etc.

7. Where any Bishop of the said United Church in Victoria shall see fit to convene an Assembly as aforesaid such Bishop shall at such time as to him may seem meet previous to the first Assembly in his Diocese summon thereto the Clergy being Incumbents or licensed by the Bishop within such Diocese and the Lay Representatives of the Diocese elected as hereinafter provided and for electing such representatives shall require each Clergyman instituted or licensed to a separate cure of souls to summon a meeting of the laymen of the Church of the age of twenty-one years and upwards resident within his Parish at such time (within limits which may be prescribed by such Bishop) and at such place within the Parish or District as to such Clergy-

Mode of summoning an Assembly.

man may seem convenient and every such lay member as aforesaid shall be entitled to vote at such election.

8. The said meeting so soon as five persons at the least are assembled shall proceed to elect a Chairman by a majority of those present and the Clergyman may be present and qualified to act as such Chairman and the Chairman shall cause a list to be made of those who shall be present and add thereto the names of any who shall subsequently attend before the proceedings are closed and shall claim to vote thereat. And every such layman present shall before taking part or voting at such meeting sign the following declaration : Chairman to be elected etc.

" I A.B. whose name is hereto subscribed do declare that I am a member of the United Church of England and Ireland and belong to no other religious denomination."

Provided that no person shall be entitled to vote at any such meeting who is known to have impugned the doctrines or discipline of the said Church.

9. Every such meeting shall choose as a Representative one male person who shall have been a communicant of the said Church for at least the term of twelve months preceding the day of such meeting and if more than fifty and less than one hundred persons shall attend and vote it shall be lawful for such meeting to elect one additional representative and so for each additional fifty persons attending and voting as aforesaid. Provided that no Parish or District shall return more than four such Representatives. Representatives to be elected.

10. In case at any such meeting the number of persons proposed for election exceed the number which the meeting is authorised to elect the Chairman shall take in writing the votes of the qualified persons present and enumerated as aforesaid and every such person may give one vote for each of such of the persons proposed not exceeding the number which the meeting is authorised to elect as he may think fit and the Chairman shall declare the number of the votes given for each of the persons proposed and the Chairman if he be not a Clergyman shall be entitled to vote at and may be elected by such meeting and where the votes of two or more persons are equal the Chairman if he be not a Clergyman may give a double vote and if he be a Clergyman may give a casting vote for any such person. Mode of Election etc.

11. The Chairman shall cause to be delivered to each person elected a certificate of his election and shall sign the minutes of the meeting in token of their correctness and unless he be the Clergyman of the Parish or District shall forward them to such Clergyman together with all certificates subscriptions and lists which had been laid before the said meeting and a certificate of the names callings and addresses of the persons chosen and the Clergyman shall forward the said documents to the Bishop to be laid before the Assembly at the meeting thereof. Certificate to be given etc.

12. Each Lay Representative elected as aforesaid shall before taking part or voting at such Assembly sign and deliver to the President thereof a declaration in the form following :— Declaration to be made.

" I A.B. whose name is hereto subscribed do declare that I am

a communicant of the United Church of England and Ireland and belong to no other religious denomination."

Assembly may make regulations etc.

13. It shall be lawful for the first or any future Assembly as aforesaid to make such regulations Acts or resolutions as it may deem fit for altering the Constitution of such Assembly with respect to the number election and qualification of the lay members thereof the manner in which the votes of the Clergy and Laity may be taken and the declarations to be signed by the electors or lay members as aforesaid (provided that every such lay member shall declare himself a communicant of such Church) and also for determining the mode in and the conditions under which such advowson or right of patronage as aforesaid may be exercised for the licensing of Clergymen by the Bishop for the adjournment and prorogation of such Assemblies and the calling of future Assemblies and the mode of election of the lay members thereof and every such Assembly may repeal alter or vary such regulations Acts or resolutions.

Provisions for cases not provided for by regulations etc.

14. The provisions of this Act in relation to the first convening and holding an Assembly in a Diocese and the election of the lay members thereof shall remain in force and be acted on until the first or any other Assembly shall otherwise provide and in any case not provided for by this Act or by the regulations for the time being of any Assembly the Bishop of the Diocese may regulate the convening of any Assembly in such Diocese and the form and manner of all proceedings preparatory thereto.

Copy of regulations to be transmitted to Archbishop.

15. A copy of the regulations passed at the first Assembly of any Diocese to be called under this Act and also of the rules framed for any such Commission as aforesaid and from time to time of any alterations of such regulations and rules shall be sent by the Bishop of such Diocese duly certified under his hand and seal as testifying his assent thereto to the Archbishop of Canterbury and also to the Metropolitan and the said Archbishop may within six months of his receipt thereof submit the same with such observations thereon as he may see fit to make for the consideration of Her Majesty in Council and Her Majesty by and with the advice of Her Privy Council may allow or disallow the same as to Her Majesty shall seem fit and the regulations and rules so allowed and a notification of such regulations and rules as may be disallowed shall be forthwith transmitted by the Archbishop to the Bishop transmitting the same and shall by such Bishop be published in his Diocese.

Provisional Acts valid.

16. Any regulation or rule disallowed by Her Majesty as aforesaid after the notification of the disallowance thereof shall have been received by the Bishop shall cease to be in force but any act matter or thing done under or in accordance with any such regulation or rule before such receipt of the notification of the disallowance thereof shall have the same validity and effect as if such regulation or rule had been allowed.

Provincial Assemblies.

17. So soon as a province shall have been constituted in Victoria it shall be lawful for the Metropolitan thereof from time to time to convene the Bishops thereof and to require them to convene the members of the several Diocesan Assemblies or such Representatives of the same as shall

hereafter by any such Provincial Assemblies be determined at such time and place as he may deem fit to consider of and determine upon all such matters and things as may concern the affairs of the said Church in Victoria and the said Metropolitan shall be the President of every such Provincial Assembly and shall always preside therein personally or by such Bishop or Bishops of his province as he may appoint his Commissary or Commissaries under his hand and seal for that purpose and the Metropolitan and Bishops attending such Assembly shall sit and vote as one house and the Clergy and lay members shall sit and vote as another house and no Act or resolution shall be valid to which both houses have not assented. And on every division of the house of Clergy and lay members nothing shall be held to be carried by a majority of such house but that to which a majority of both the Clergy and laity voting by Dioceses shall have assented the vote of the majority of the Clergy present and representing each Diocese being taken as the vote of the Clergy of such Diocese and the vote of the majority of the laymen present and representing the laity of each Diocese being taken as the vote of the laity of such Diocese. And such Provincial Assembly may pass rules and regulations for the uniform conduct of and mode of proceeding in all Diocesan Assemblies and all rules and regulations so passed shall be valid subject to such alteration allowance or disallowance as has been hereinbefore provided with regard to the regulations of Diocesan Assemblies.

NOTE

This section is repealed by section 2 of the "Church of England Act 1904."

18. Nothing herein contained shall affect the right to nominate or appoint any Metropolitan or Bishop of the said United Church in Victoria or any other rights or prerogatives of Her Majesty save so far as the advowson or right of patronage in Victoria (if any) now vested in Her Majesty may be hereby expressly impaired diminished or affected.

Royal prerogative not interfered with.

19. In the construction and interpretation of the provisions of this Act the word "Bishop" shall include the Metropolitan of the Province with reference to his Metropolitan Diocese.

Interpretation.

DOCUMENT M

THE CONSTITUTION OF THE PROVINCE OF VICTORIA.

[Agreed to and Accepted on November 14, A.D. 1905]

WHEREAS by Determination I. of the General Synod of the Dioceses in Australia and Tasmania, Session 1881, General Rules are laid down for the formation of Provinces within the limits of the Dioceses constituting the said Synod and the regulation of matters connected therewith;

And whereas the Province of Victoria has been duly formed, consisting of the Dioceses of Melbourne, Ballarat, Bendigo, Wangaratta, and Gippsland; and whereas the City of Melbourne is the See of the Metropolitan;

And whereas it is provided by Rule 9 of the said Determination

that so soon as conveniently may be after the formation of a Province, the Bishops and Clerical and Lay Representatives of the Church in the several Dioceses of the Province shall meet under the Presidency of the Metropolitan thereof, and shall agree upon the Constitution of the Provincial Synod of the said Province ;

And whereas it is provided by Rule 10 of the said Determination that such Constitution as aforesaid shall as nearly as the circumstances of the case will permit be framed on the plan of the Constitution of the said General Synod. Provided always that the powers of the Provincial Synod shall be limited to matters and things concerning the order and good government of the Church in the Province, and that no Ordinance or other Determination of the Provincial Synod shall contravene any Determination of the General Synod, and provided also that due provision shall be made to enable the Provincial Synod to accept the Determinations of the General Synod ;

And whereas it is expedient, without further delay, to agree upon the Constitution of the Provincial Synod of the said Province of Victoria :

Now we the Bishops and Clerical and Lay Representatives of the Church in the said several Dioceses of the said Province being met under the Presidency of the Metropolitan thereof, do agree to, and accept, the said following Articles and Provisions of the Constitution of the Provincial Synod of the Province of Victoria :

1. The Provincial Synod shall be constituted of the Bishops of all Dioceses within the limits of the Province and of Clerical and Lay Representatives of the Church in the said Dioceses. And such Synod shall be called "The Provincial Synod of the Province of Victoria." And the Archbishop of Melbourne for the time being shall be known and designated as Metropolitan.

2. The Provincial Synod shall be convened and holden in the manner hereinafter provided.

3. The Provincial Synod shall consist of two Houses—namely, the House of Bishops and the House of Representatives—and both Houses shall sit together for deliberation and transaction of business, but shall on all occasions vote separately. Provided that if at any time either House shall desire to consult apart on any subject under consideration the further discussion of that subject shall be postponed in order to afford each House an opportunity for such consultation.

4. To the Provincial Synod every Diocese having under twenty-one Clergymen duly licensed to officiate within it shall be entitled to send four Clerical and four Lay Representatives, and every Diocese having above twenty and under thirty-one such Clergymen shall be entitled to send six Representatives of each order as aforesaid, and every Diocese having above thirty and under forty-one such Clergymen shall be entitled to send eight Representatives of each Order as aforesaid and every Diocese having above forty and under fifty-one such Clergymen shall be entitled to send ten Representatives of each Order as aforesaid, and every Diocese having above fifty such Clergymen shall be entitled to send twelve Representatives of each Order as aforesaid. And the mode of electing or otherwise appointing such Representatives and of supplying any vacancies in the number of Representatives when elected or other-

wise appointed shall be determined by the Church in each Diocese. Provided always that every Clerical Representative shall be in Priest's Orders and duly licensed to officiate in the Diocese of which he is a representative, and that every Lay Representative shall be of the age of 21 years and a Communicant of the Church.

5. A period of not more than three years shall elapse between the Sessions of the Provincial Synod, but the Metropolitan may at his own discretion, and shall at the request in writing of a majority of the other Bishops of the said Dioceses, summon at any time a Session of the Provincial Synod. And for the purpose of holding any Session of the Provincial Synod the Metropolitan shall, by writing under his hand and seal, summon the Bishops of each of the said Dioceses, and also require such Bishops to convene Representatives of the Church in his Diocese at such time and place as the Metropolitan may deem fit.

6. The Metropolitan, or in his absence the Bishop present senior in consecration, shall be President of the House of Bishops, and of the Provincial Synod. And the President may, with the concurrence of the Synod, prorogue and dissolve the same. And the President may take part in any discussion and vote on any question or matter arising therein.

7. The Provincial Synod shall have power to make rules for the conduct of all business coming before it, and to make rules for trying the validity of the election or appointment of any person claiming to be a Representative member thereof.

8. The Provincial Synod shall have power to make Ordinances and Determinations upon and in respect of all matters and things concerning the order and good government of the Church in the Province, including the acceptance of any Determination of the General Synod subject to the provisions hereinafter contained. Provided that no Ordinance or other Determination of the Provincial Synod shall contravene any Determination of the General Synod. And provided that such Ordinances or Determinations as are passed without reference from any Diocesan Synod shall not be binding upon the Church in any Diocese, unless and until such Ordinance or Determination shall be accepted by the Church in such Diocese. And the mode of accepting in any Diocese the Ordinances and Determinations of the Provincial Synod shall be laid down by the Church in such Diocese. Provided that if any matter be referred to the Provincial Synod by any Diocesan Synod, the decision of the Provincial Synod shall be binding on the Diocese so referring the same.

9. No Rule, Ordinance, or Determination of the Provincial Synod shall make any alteration in the Articles, Liturgy, or Formularies of the Church, except in conformity with any alteration which may be made therein by any competent authority of the Church of England in England.

10. The Provincial Synod may appoint Committees either under special instructions or under such General Regulations as shall from time to time be laid down by the Synod for the purpose of carrying into effect any Ordinances and Determinations which have been passed by the Synod.

11. Every Ordinance or Determination of the Provincial Synod shall be made by a majority of both Houses thereof, and in every

division of the House of Representatives the voting shall be by Orders, and a majority of the votes of each Order shall be necessary to secure the resolution of a question in the affirmative. And the presence of at least three Bishops and of one-third of the Clerical and one-third of the Lay Representatives of at least two Dioceses shall be necessary to constitute a meeting of the Provincial Synod.

12. No Rule or Ordinance of the Provincial Synod shall be vitiated by reason of any informality in the representation of any Diocese, or want of such representation.

13. In the case of the death, absence, or incapacity of the Metropolitan, his functions shall be exercised by the Bishop of a Diocese in the Province senior in consecration. And in case of the absence of any Suffragan Bishop, his functions under this Constitution shall, subject to any provisions made in that behalf by the Church in his Diocese, be exercised by a Commissary appointed by him, and in case no such Commissary shall have been appointed or the See be vacant or the Bishop incapable, such functions shall be exercised by the person who shall then be the next in ecclesiastical rank or degree in his Diocese and resident therein. Provided that it shall not be competent for any one to sit in the House of Bishops in the stead of a Bishop.

14. This Constitution may be altered by the Provincial Synod, which shall have power to make Ordinances altering it, provided that every such Ordinance shall have been first approved of at one Session of the Provincial Synod, forthwith communicated to the several Diocesan Synods, and assented to by at least two-thirds of such Dioceses as shall have adopted this Constitution, and finally passed at the succeeding Session of the Provincial Synod.

DOCUMENT N

THE CONSTITUTION OF THE DIOCESE OF ADELAIDE, (1855):

FUNDAMENTAL PROVISIONS AND REGULATIONS FOR THE GOVERNMENT OF THE UNITED CHURCH OF ENGLAND AND IRELAND WITHIN THE DIOCESE OF ADELAIDE IN SOUTH AUSTRALIA.

PREAMBLE.

WHEREAS, the Bishop, Clergy, and Laity of the Diocese of Adelaide, in South Australia, are exposed to divers inconveniences, by reason of the want of Local regulation to meet the special circumstances and requirements of their position in this Colony; insomuch that if a remedy for such inconveniences be not provided, the wholesome discipline of the Church may be relaxed, errors of Doctrine creep in, and other grievances afflict the brethren;

AND WHEREAS, for the more effectual development and combination of the sympathies and energies of the Church, in the support and extension of her Ordinances and Administrations throughout the Colony, as well for the edification of the brethren, as for the provoking of them to love and good works, it is desirable that Clergy and Laity be brought into closer fellowship by periodically conferring together;

AND WHEREAS it is expedient that the due supply and support of Ministers within this Diocese, as well as the management, disposal, and enjoyment, of all the Real and Personal Estates and Effects of this Diocesan Church, be secured ;

AND WHEREAS it is considered desirable by the Lord Bishop of Adelaide, that he, being the exercise of his Episcopal Authority, aided by the Clergy and Laity of his Diocese ;

NOW, THEREFORE, in consideration of the premises aforesaid, and to secure the said objects, the following Fundamental Provisions and Regulations have been agreed upon and adopted for the Government of the said Diocesan Church, by the Right Reverend Augustus, by Divine Permission, Lord Bishop of Adelaide ; by the Reverend the Clergy of the Diocese, whose names and seals are hereunder respectively subscribed and affixed, being respectively Presbyters and Deacons of the Diocesan Church of Adelaide ; and by the undersigned Lay Communicating Members representing the respective Churches mentioned opposite their several signatures and seals ; in Synod assembled, this ninth day of October, 1855.

And are hereby declared to be, and accepted as, and for, a consensual compact between the several parties immediately abovenoted.

DECLARATION.

The Diocese of Adelaide, in South Australia is a part of the United Church of England and Ireland ; and doth maintain the Doctrine and Sacraments of Christ, as the Lord hath commanded, and as the said United Church of England and Ireland doth receive the same ; together with the Book of Common Prayer, and of ordering of Bishops, Priests, and Deacons.

FUNDAMENTAL PROVISIONS.

SYNOD.

1. There shall be a Synod for the Regulation of the affairs of that part of the United Church of England and Ireland within this Diocese, consisting of the Bishop, of the Clergy holding a Licence from the Bishop, and of Synodsmen being in full communion, elected by the respective congregations, each congregation to have the right of representation in such proportion as may be, from time to time, determined by the Synod. Deacons may take part in the discussions, but may not vote thereat. (See Schedule A.)

2. The Synod shall have full power from time to time to make Fundamental Provisions, and Regulations not fundamental, for this Diocesan Church, not being repugnant to the Declaration and Preamble prefixed hereto ; and such Synod is and shall be the proper Court for the trial of such offences as may be presented to it by the Bishop.

3. Synodsmen shall be elected annually, and shall of right speak and vote upon equal terms with the Clergy.

4. The Synod shall meet annually in Adelaide, but the Bishop may, at any other time, and will, if the Standing Committee so recommend, when specially requested in writing by ten Synodsmen representing not less than five congregations, and five Clergymen in Priest's Orders, convene the Synod.

5. The Bishop shall preside at all such meetings ; and whenever

the Synod does not vote by Orders, shall have a Casting as well as a Deliberative vote.

6. No business may be transacted by the Synod unless one-quarter of the whole body be present.

7. The Synod shall not make, alter, or repeal, any Fundamental Provision without notice duly given for a Call of the Synod, and the concurrent assent of the Bishop, and of at least two-thirds of the Clergy and Synodsmen present, respectively, voting by orders.

8. All questions respecting the appropriation of Funds within the control of the Synod shall be decided by a majority of the Synod, not voting by orders.

9. The Synod shall at its Annual Meeting appoint a standing Committee, Secretary, and Treasurers, to transact such business as may be assigned to them by the Synod ; to hold office until their successors be appointed.

10. The Accounts, Minutes, and all other Records of the Synod shall be accessible to the Members of the Synod at all reasonable times.

11. An Abstract of Receipts and Expenditure of all Funds under the control of Synod shall be printed and published annually.

12. No person shall vote for the election of a Synodsman for the Church to which he may belong, unless he be a stated attendant thereat, and shall have signed a declaration that he is a bona fide member of the Church of England, and of no other religious body. (See Schedule B.)

Parochial Organization.

13. The Diocese of Adelaide shall, in respect of the Members of the United Church of England and Ireland, be divided into Parishes ; each Parish to consist of the Members of such Church resident within certain limits, to be defined and readjusted from time to time by the Synod.

14. Whenever any number of persons professing to belong to the United Church of England and Ireland, shall desire to unite in Public Worship, and request to be recognised as a Parish, the Synod shall, if it think fit, upon such persons showing that a reasonable income can be provided for a Minister, and engaging, by some formal instrument, to consent to the Fundamental Provisions and Regulations passed in Synod, constitute such Parish under some distinctive appellation, and shall assign the boundaries thereof. (See Schedule C.)

15. The Incumbent of any Church shall be a Clerk in Priest's Orders, holding the License of the Bishop.

16. Such Incumbent shall, before Induction, subscribe a Declaration, that he will, when sentenced, according to these Fundamental Provisions, to Deprivation or Suspension, and served with notice thereof, quit and give up possession, on demand of the Bishop, to the Trustees or Trustee for the time being of such Incumbency, of all the Real and Personal Estate and Effects which he may at any time hold, or be entitled to, by virtue of his Incumbency and Licence. (See Schedule D.)

17. No Clergyman shall be Incumbent of the Church of which he is a Trustee ; or Trustee of any property, Real or Personal, incident to his office of Incumbent of such Benefice.

18. The Spiritual care of Members of the United Church of England, and Ireland, not residing in any Parish shall be provided for by means of ordained Missionaries, Licensed by the Bishop ; or if such may not be had, by duly qualified Lay Persons specially licensed thereto.

DISCIPLINE.

19. Any accusation against a Clergyman of the Diocese shall be made to the Bishop in writing and signed by the party or parties preferring it.

20. The Bishop shall then, if in his opinion it be a matter of sufficient importance, cause to be served upon the accused, a copy of the said charge ; and refer it to a Committee of Preliminary Inquiry, consisting of the Chapter, or of three grave Ministers.

21. If on such inquiry there shall appear no sufficient ground for the charge, the Bishop may dismiss the same.

22. But should a prima facie case be established, the Bishop shall, unless the accused forthwith submit himself to the judgment and sentence of the Bishop, bring the matter before the Standing Committee, who shall proceed to elect by ballot from the whole body of the Synod, Five Presbyters, and Five Synodsmen, who shall sign the declaration contained in Schedule E, to act with the Bishop as his Assessors. (See Schedule E.)

23. The accused shall then be furnished with a copy of the charge, and with a written citation, under the Episcopal Seal of the Bishop, to appear before him and his Assessors, on a day not less than ten days after service thereof, and at a place and hour specified in the citation, to answer the charge.

24. If the accused be found guilty by a majority of the Assessors, the Bishop shall pass such sentence upon him, as, in the full exercise of his jurisdiction, and in his conscience, he shall deem right ; and the accused shall be entitled to receive a copy of such sentence, under the hand and Episcopal Seal of the Bishop.

25. Should the accused demur to the verdict of the Assessors, he shall be allowed an appeal to the whole Synod ; and the sentence of the Bishop, consequent on the decision of the Synod, shall, as respects temporalities, be final. Notice of such appeal must be given to the Bishop, within ten days from the adjudication before the Assessors.

26. No Clergyman shall be suspended from officiating for more than fourteen days, until after inquiry into the charge against him by the Committee of Preliminary Inquiry.

27. In the event of any accusation being brought against a Bishop of this Diocese, the charge must be preferred in writing under the hand of the party making the same, and delivered to the Senior Archdeacon, or, in his absence or default, to the Dean or next Senior Member of the Chapter ; who, if the accusation is stated in precise terms, and is supported by not less than three regular communicants in this Diocesan Church, certifying their belief of the same, shall forward the same without delay to the Metropolitan.

28. Any persons bringing forward an unfounded or frivolous accusation against a Bishop, or any Clergyman, shall be deemed worthy of censure by the Synod ; and a copy of such censure shall be forwarded to the Minister and Wardens of the Church to which

the accuser or accused may belong, together, in the case of a Bishop, with the decision of the Metropolitan on the accusation.

Trustees.

29. The Synod shall appoint a Body of Trustees, not less than six, of whom the Bishop for the time being shall be one, to hold property that may be given for the general purposes of the Diocese.

30. The Clergy, Synodsmen, Electors and Assessors, shall respectively sign the Declarations contained in Schedules A, B, C, D, and E, hereto appended.

31. The words "The Bishop" in these Fundamental Provisions and Regulations shall (unless there be something in the subject or context repugnant to, or inconsistent with, such construction) include the Bishop's Commissary.

REGULATIONS (NOT FUNDAMENTAL).

Synod.

1. The Synod shall meet on the summons of the Bishop, within one calendar month after Easter.

2. At the commencement of every Session the Members of the Synod shall attend Divine Service.

3. The proceedings of the Synod shall then be opened by the Bishop delivering a Pastoral Address containing a Report of the general state of the Church in the Diocese, and such other matters as he may think fit.

4. The Standing Committee shall then deliver their Report for the past year, with statements of Accounts duly audited.

5. The Synod shall then proceed to the election by Ballot of the Standing Committee and other Officers for the ensuing year.

6. Notices of Motion shall then be given and business proceeded with in accordance with the Standing Orders.

7. No Session of Synod shall be closed until the business thereof shall have been disposed of.

Synodsmen.

8. Synodsmen shall be elected at the Vestry Meetings in Easter Week, and from time to time, as vacancies may occur, and their names returned to the Bishop by the Chairman within seven days after election.

9. The City Churches shall each have four Synodsmen, Suburban and Country Churches each two Synodsmen.

Standing Committee.

10. The Standing Committee shall consist of seven Clerical, and fourteen Lay Members, the Bishop, if present, presiding: seven Members to form a quorum.

11. The Standing Committee shall meet monthly, or oftener if necessary.

Funds.

12. There shall be one General Church Fund, to be appropriated by the Synod towards the support and extension of the Ministrations

of the Church, especially in the remote and thinly populated portions of the Diocese. Special donations to be applied in accordance with the wishes of the Subscribers.

SCHEDULES REFERRED TO IN FUNDAMENTAL PROVISIONS.

Schedule A.

(Clause 1.)

I, do hereby declare that I am a Member of the United Church of England and Ireland, and belong to no other Religious Denomination, and I hereby accept the office of a Synodsman, and promise to perform honestly, impartially, faithfully, and to the best of my judgment and ability, the Duties of that office.

Witness { ..... Signature.

Schedule B.

(Clause 12.)

I, do hereby declare that I am a Member of the United Church of England and Ireland, and belong to no other Religious Denomination.

Witness { ..... Signature.

Schedule C.

(Clause 14.)

We, the undersigned Members of the United Church of England and Ireland, in consideration of our being recognised as a Parish in the Diocese of Adelaide, under the designation of , and of our being entitled to be represented in Synod, do hereby engage to abide by the Fundamental Provisions and Regulations of this Diocesan Church.

Witness our Hands, this day of

Schedule D.

(Clause 16.)

I (A.B., of) do hereby engage to give up to the Trustees, on demand of the Bishop or the Trustees, possession of all the Real and Personal Estates and Effects which I may hold, or be entitled to, by virtue of my office, at the time, if and when sentenced according to the Fundamental Provisions of the Diocese, to Deprivation or Suspension ; and that I will, in all other respects, conform to and abide by the said Provisions.

As Witness my Hand this day of

SCHEDULE E.

(Clause 22.)

I, (A.B., &c.) hereby declare that I am a Member of the United Church of England and Ireland, and belong to no other Religious Denomination, and that I allow the Thirty-nine Articles and the Book of Common Prayer, and the Manner of Making, Ordaining, and Consecrating of Bishops, Priests, and Deacons, to be agreeable to the Word of God. And I hereby promise to perform honestly, impartially, faithfully, and to the best of my judgment and ability those duties which are required of me.

As Witness my Hand this day of A.D.

A.B.

Witness C.D. of &c.

E.F. of &c.

COMPACT.

The foregoing Declaration, Fundamental Provisions, and Regulations, presented for our acceptance by the Lord Bishop of Adelaide, on behalf of himself and his Successors, forasmuch as we believe them to be for the spiritual well-being of this Diocese, We, the Undersigned, accept, and solemnly promise to observe, and as far as in us lies, to enforce, as a Contract knowingly and willingly entered into, by and between the several parties from time to time having notice thereof, and who, by acting thereunder, or accepting or availing themselves of any of the obligations or advantages thereof, expressly or by implication consent thereto.

IN WITNESS whereof, we have to these presents set and subscribed our respective Hands and Seals this Ninth day of October, in the year of our Lord God, One thousand Eight Hundred and Fifty-five.

(Here follow the signatures.)

DOCUMENT O

RESOLUTIONS ADOPTED BY THE ADELAIDE DIOCESAN CONFERENCE (January 6, 1852).

[S.P.G. Library 15088].

(Reprinted from the Proceedings of the Conference of the Bishops, Clergy, and Laity of the Diocese of Adelaide, held on the 6th of January [1852], in Trinity School Room, Adelaide (Adelaide, 1852). Pp. 19–23.)

Whereas the Church of England in South Australia receives no aid from the Local Government by grants of land or money; but is dependant solely on the voluntary contributions of its members for the support of its Ministry; the maintenance of Missions to the Aborigines and other Heathen; and for the building of Churches, Parsonages, and Schools, in which its doctrine and discipline may be taught: And whereas for the edification of its Members, and "provoking to love" and the above-mentioned "good works," it is desirable that they should be brought into closer fellowship by Parochial

Organization, and " the assembling of themselves together " periodically :—We the Bishop, Clergy, and Laity, in Conference assembled, have agreed to recommend the following plans and suggestions to the several Congregations of this Colony.

And whereas this Diocesan Church is part and parcel of the United Church of England and Ireland, by Law established in the United Kingdom ; and therefore subject to the general Ecclesiastical Laws enforcing the Supremacy of the Crown, the use of the Book of Common Prayer, the Authorised Version of the Holy Scriptures, and subscription to the Thirty-nine Articles :—We, the Bishop, Clergy, and Laity being under the obligations thus implied, and being earnestly desirous to maintain inviolate that unity and fellowship in the Church of our Fathers, do declare that we hold it to be incompetent for any Diocesan Assembly, or Synod of the Clergy, or Convention of Lay Representatives, held in pursuance of these recommendations, to " treat, debate, consider, consult, or agree upon," any alteration in those Formularies and Principles, except it be initiated by the direct authority of the Crown, or in virtue of Licence from the Crown obtained in that behalf :

Under this limitation, with the view of promoting the closer fellowship as well as efficiency of this Diocesan Church, we have resolved to recommend that an Assembly consisting of the Bishop, Chapter of Clergy, and Convention of Lay Representatives be convened periodically, composed as is hereinafter specified, and to be called the " Diocesan Assembly."

I. Diocesan Assembly.

This Assembly is constituted when the Convention and Chapter of Clergy meet together and are presided over by the Bishop.

II. Chapter of Clergy.

The Chapter of Clergy consists of every duly licensed officiating Minister, Presbyters alone having the right of voting.

III. Convention of Laity.

The Convention shall consist of Lay Representatives (being Communicants) for all the Congregations, in the following proportion :—for a Congregation under 100 souls, one Representative ; 100 and under 200, two Representatives ; and so on in proportion : to be elected annually in the month of October by the registered Lay Members of each Congregation contributing to its Seat Rent or the Pastoral Aid Fund, and attending from time to time on the worship of the Church.

Instruction.—Under the present circumstances of the Church in this Diocese, we are of opinion that persons who communicate three times in the year are eligible to be elected Lay Representatives.

IV. Election of Representatives.

A meeting of adult male Registered Lay Members qualified to vote according to Clause III, shall be called for the purpose of electing Representatives, by the Minister, or in his absence or default by the Wardens, by a Notice posted on the Church doors at least seven clear

days previous to the day of Meeting. Each adult shall have a vote for each sitting, provided that no person shall have more than six votes. No person shall vote in respect of any sitting the rent of which shall be then due and unpaid. The Votes shall be in writing, to be openly declared, personal attendance not being necessary. In the event of any person elected as Representative declining, or being unable to act, the next highest on the list, shall be declared duly elected. In the event of an equality of votes the Chairman shall have a casting vote. A Return of the Representatives elected shall be made by the Chairman, who shall be the Minister, or in his absence such person as the Meeting may elect, to the Bishop of the Diocese within fourteen days. The presence of at least five Members of the Congregation besides the Chairman, shall be necessary to constitute a meeting for the election of Representatives. The Wardens, if in attendance, shall act as Scrutineers.

V. Meeting of Assembly.

The Diocesan Assembly shall be convened annually by the Bishop in the month of December, on which occasion Divine Service shall be held, and a Pastoral Letter from the Bishop containing a report of the general state of the Church in this Diocese—the progress of Religion and Education—and of the means of Public Worship, will be received. Extraordinary meetings may be convened by the Bishop, when he sees fit, or upon a requisition by seven of the Clergy who have been at least five years in Priest's Orders, or of ten Representatives.

VI. Mode of Deliberation.

It shall be lawful for the Chapter of Clergy and Convention to deliberate apart, or in conference (by mutual agreement) with each other, or with the Bishop.

VII. Mode of Voting.

The assent or dissent of the Chapter of Clergy and Convention shall be determined by the majority of open votes in each order respectively. No resolution shall be passed, unless one-third of each order shall be present.

VIII.

No Rule shall be binding on the Members of the Church in this Diocese, which shall not have received the concurrent assent of the Bishop, the Chapter of Clergy, and the Convention in the Diocesan Assembly.

IX. Committees.

The Diocesan Assembly shall, at every Annual Meeting, appoint a Standing Committee for the ensuing year, consisting of seven Clerical, and fourteen Lay members, the Bishop of the Diocese to be the President. Two Clerical and four Lay members shall form a quorum. This Committee shall elect its Finance and other Sub-Committees, and transact the business assigned to it by the Diocesan Assembly during its recess, subject to such Rules and Regulations as may be adopted by that Assembly.

X. Finance.

The establishment of five separate and distinct Funds is recommended, viz :—a Pastoral Aid Fund, which we consider to be of primary importance, and Endowment Fund, a Church Building Fund, an Educational Fund, and a Mission Fund to the Aborigines and Heathen. These funds shall be placed under the control and be subject to the regulation of the Diocesan Assembly, and be administered by its Finance Committee.

XI. Pastoral Aid Fund.

(a) The object of this Fund is to afford aid to Ministers whose incomes may not reach the minimum sum of £150 per annum from Pew Rents and Endowments, Claims on this Fund will not be admitted as a matter of right from any Minister whose Church or District is capable of providing him with a suitable income ; it being more particularly intended to aid Ministers having small churches and in poor districts, as the state of the Fund may permit, due consideration being had for such Ministers as have families. It is also proposed that aid should be granted from this Fund towards the support of Clergymen to itinerate in remote districts.

Amount of Subscription.

(b) It is recommended that a subscription of one shilling per month towards this fund be collected from all who are willing to contribute thereto.

Sidesmen or Collectors.

(c) It is recommended that Sidesmen, or other persons be elected annually by the respective congregations, to collect the subscriptions to the Pastoral Aid Fund.

Annual Sermons.

(d) It is recommended that Annual Sermons be preached, and collections made in all churches in support of the Pastoral Aid Fund.

Note. Aid should not be granted from this Fund (except in extraordinary cases) to Ministers of Churches the Trust Deeds of which shall appear to the Finance Committee inconsistent with rules to be laid down in that behalf by the Diocesan Assembly.

XII. Endowment Fund.

It is suggested that this Fund be established by means of annual subscriptions, and donations of money or land. This Fund is intended to aid local efforts in providing endowments and erecting Parsonage Houses ; the Fund to be administered by the Finance Committee, on conditions to be prescribed by the Diocesan Assembly.

XIII. Church Buildings Fund.

This Fund is to be formed and administered in like manner as the preceding.

XIV. Mission Fund.

This Fund is to be formed and administered in like manner as the preceding.

XV. Educational Fund.

The Establishment of a Fund is recommended in aid of Salaries to School Masters and School Mistresses; building School Houses, and to promote education according to the principles of the Church of England, under conditions to be determined by the Diocesan Assembly.

XVI. Miscellaneous Resolutions.

1. *Ecclesiastical Tribunal.*

(a) It is of opinion of this meeting that the Laity should have a voice in any Court, when sentence might have the effect of depriving a Minister of the temporalities annexed to his cure.

(b) Resolved that the Lord Bishop be requested to communicate to His Grace the Archbishop of Canterbury, and Her Majesty's Secretary of State for the Colonies, the foregoing resolution, in order that the wish expressed in it may be considered, in case it should be deemed expedient to make any provision for the better Ecclesiastical Government of this and other Colonial Dioceses.

2. *Registration.*

It is recommended that Registers after an approved form be compiled by each Minister, and kept by him, of all Members of one Church, residing within his Parish or District from which a Register for the Diocesan Assembly shall be compiled and corrected periodically; the object being, to bring the Members of the Church into closer fellowship by means of Pastoral visitation, and to extend Church accommodation and the means of Education as Population increases.

3. *Corporate Powers.*

It is recommended that (in addition to the powers possessed by the Lord Bishop, as a Corporation Sole, in virtue of Her Majesty's Letter Patent) Corporate powers should be sought for to hold lands in perpetuity, for the benefit of each Church or Congregation.

4. *Memorial to the Queen.*

A Memorial setting forth the various requirements of the Church in this Diocese as respects Ecclesiastical Discipline, shall be prepared by this Assembly and forwarded by the Lord Bishop of the Diocese through His Grace the Archbishop of Canterbury to be laid before Her Most Gracious Majesty the Queen, praying that such requirements may be met in such way as Her Majesty and Her advisers in matters Ecclesiastical, may deem expedient.

DOCUMENT P

A MEMORIAL TO THE QUEEN.

[S. P. G. Library 15088]

(Reprinted from the same Proceedings as Document O. Page 24.)

To her Most Gracious Majesty VICTORIA, by the Grace of God Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith.

The Memorial of the undersigned Bishop, Clergy, and Laity of that part of the Diocese of Adelaide, comprised within the Province of South Australia, in Conference Assembled :—

Humbly Sheweth—

That the Church of England in this Diocese not being by Law established, and the Clergy not enjoying Corporate Rights as in England, much expense and inconvenience arise in the conveyance of Ecclesiastical Property to Trustees.

That changes in the office of Trustee are very frequent in a newly settled Colony.

That Churchwardens are elected annually by the Minister and Congregation.

That the Churchwardens so appointed, have no legal right to perform the duties usually appertaining to that ancient and popular office ; the Church and Church Property being vested in Trustees, who may remove to a distance from the Church, or even depart out of the Colony.

That the body of English Ecclesiastical Law, has not yet been adapted to the wants and necessities of the Church in the Colonies.

That the jurisdiction of the Bishop over the Clergy is left without any prescribed form of Process : that he is not armed with legal authority to deprive of temporalities a Clergyman duly convicted of teaching contrary to the doctrine of the Church of England, or of immoral conduct.

That there is no prescribed form or mode of Appeal to the Metropolitan, or of giving effect to the sentence of his Court.

That the periodical meeting of the Bishop, Clergy, and Laity in Diocesan Assemblies, is as yet unauthorised by the Supreme Authority of the Crown.

That your Memorialists are persuaded much good is likely to arise from such Assemblies, when conducted according to prescribed rules, and with powers properly defined.

Your Memorialists therefore humbly pray that your Gracious Majesty may be pleased to sanction such Diocesan Meetings of the Bishop, Clergy, and Laity : and to empower them to make and give such effect to Rules and Regulations as may be deemed expedient for the better government of the Church in this Colony, and as may be consistent with the Doctrine and Discipline of the Church of England and the lawful Supremacy of the Crown.

DOCUMENT Q

LETTER OF THE REV. R. JOHNSON TO THE UNDER-SECRETARY OF STATE.

(*Historical Records of New South Wales*, Vol. II, pp. 64 f.)

SYDNEY, NEW SOUTH WALES,
September 3rd, 1793.

" HON'D. SIR.—As Chaplain to this distant Colony, I humbly beg leave to state to you these following circumstances, viz. that from my first arrival in this country, which was at the first formation of the

Settlement, I trust I have at all times endeavoured to discharge the various duties of my sacred function with fidelity and diligence.

"That in doing this, I have hitherto met with many and great inconveniences.

"That publick works of different kinds have been, and still continue to be, so urgent that no place of any kind has yet been erected for the purpose of performing Divine Service.

"That my own health has been greatly exposed and at times not a little injured by these means.

"That for the same reasons (I mention it with sincere concern) there has been too general and repeated neglect shewn to publick worship.

"That on these and such like considerations, I have at length deemed it advisable, and even expedient, on my own accord, and account, to run up a temporary shelter, which may serve the above important purpose until a better can be provided.

"That I have, to save expense, gone upon as reasonable and rough a plan as possible, that I have, since I began this work, devoted the principal part of my time to it, and have exerted myself to the utmost to get it completed.

"That I began this building on the 10th of June last, and have just at this time got it finished.

"That the Building which I have erected will seat about five hundred people, and hold one hundred more when necessary.

"That I have given in an estimate of the whole expense to his Honour, the Lieutenant-Governor, the real amount of which has been upwards of sixty-seven pounds, sixty pounds of which I have paid in Spanish dollars, and the remainder in provisions at or under prime cost.

"I humbly trust, sir, that what I have done will meet with your approbation, that it will be a means of rendering my own situation more comfortable than it hitherto has been, and also, of inducing these unhappy people, whose reformation I do so ardently wish to see, to attend more willingly and, consequently, more regularly, upon the solemn and public worship of God.

"I beg leave, Sir, to apologize for intruding so much upon your time, when matters of much mightier moment are daily coming before you; but conscious of the rectitude of my intentions, and fully aware of the expediency of what I have done, in the above affair, I have been induced to take this freedom.

"I have, etc.,

(Signed) RICHARD JOHNSON."

DOCUMENT R

AN ORDER IN COUNCIL OF FEBRUARY 4TH, 1833, DISSOLVING THE CORPORATION OF THE TRUSTEES OF CHURCH AND SCHOOL LANDS.

Privy Council Register, William IV, No. 214 (p. 17).

4th day of February 1833.

At the Court of S James'

Present,

The King's Most Excellent Majesty in Council. Whereas His late Majesty King George the IV, did by certain Letters Patent under the

Great Seal of the United Kingdom, bearing date the 16th day of July in the year 1825 constitute and appoint Ralph Darling Esquire Lt General of His said late Majesty's forces, His Captain-General and Governor-in-Chief in and over the territories of New South Wales and its Dependencies; and whereas by certain additional instructions under His late Majesty's Signet and Sign Manual accompanying and referred to in the said Commission, His said late Majesty did require and command the said Ralph Darling to affix the Public Seal of the said Colony to certain Letters Patent for erecting therein a certain Corporation by the name of the Trustees of the Clergy and School Lands in the Colony of New South Wales in such manner and form as in and by the said additional instructions, the said Ralph Darling did on the 9th day of March 1826 issue under the Public Seal of the said Colony certain Letters Patent constituting and erecting the said Corporation and it was thereby and amongst other things provided, and His late Majesty did thereby declare it to be His Will and did ordain that it should be lawful for His said late Majesty, His Heirs and successors, by any order to be issued by him or them for that purpose with the advice of His or their Privy Council, to dissolve and put an end to the said Corporation in case it should appear to His said late Majesty, His Heirs, and successors with the advice aforesaid, expedient so to do; and whereas it doth appear to His Majesty with the advice of His Privy Council, expedient to dissolve and put an end to the said Corporation. Now therefore, His Majesty doth, with and by the advice aforesaid, hereby dissolve and put an end to the said Corporation and the same is by this present order dissolved accordingly, and the Right Honourable Viscount Gooderick one of His Majesty's Principal Secretaries of State is to give the necessary directions therein

Signed

C. GREVILLE.

Sydney Gazette and New South Wales Advertiser, Tuesday, August 29th, 1833.

DOCUMENT S

MINUTES OF PROCEEDINGS AT A CONFERENCE OF THE METROPOLITAN AND BISHOPS OF THE UNITED CHURCH OF ENGLAND AND IRELAND IN THE PROVINCE OF AUSTRALIA, HELD IN SYDNEY FROM NOVEMBER 23 TO DECEMBER 1, A.D. 1868.

We, the undersigned Metropolitan and Suffragan Bishops of the United Church of England and Ireland, in the Province of Australia, as it is at present defined in the Letters Patent of the Lord Bishop of Sydney, having been permitted by the good Providence of God to come together for the Consecration of St. Andrew's Cathedral in the City of Sydney, have taken advantage of this opportunity, for consulting upon various matters affecting the welfare of the Church in such Province; and we desire to commend the conclusions, at which we have arrived, to the consideration of the Church in its several Dioceses.

F. SYDNEY, Metropolitan.
AUGUSTUS ADELAIDE.
C. MELBOURNE.
W. NEWCASTLE.
E. W. BRISBANE.
M. GOULBURN.
C. H. TASMANIA.

I.—The Present Relation of the Church of England in the Province of Australia to the Church at Home, and the Best Mode of Maintaining such Relation.

We desire to express our opinion, that the present relation of the Church of England in the said Province to the Church at home is one of identity of doctrine and worship and of subjection to the Law of the United Church of England and Ireland, so far as it is applicable to a Church not established by law; and that this relation may practically be best maintained by a system of Diocesan and Provincial Synods, and by a common final Court of Appeal, and by a Council of Reference.

II.—The Mode in which Colonial Bishops should be Appointed

In our opinion it is desirable that (saving the rights of the Crown) Colonial Bishops in the said Province should be appointed in the following manner: That the election of a Bishop, having been made by the Church of the Diocese (whatever mode of election the Diocesan Synod may have adopted) should be confirmed by the Bishops of the Province; and that the person, so elected and confirmed, should be consecrated by the Archbishop of Canterbury, or by the Metropolitan.

We are also of opinion, that so long as it is practicable, Letters Patent, assigning to the Bishop a territorial sphere of action, should continue to be issued.

We are further of opinion that, in the election of a Bishop the Diocesan Synod might, if it thought proper, delegate the power of choosing a clergyman to fill the vacant See, to any Bishop or Bishops, or to such a body as the Standing Committee of the Synod, or a permanent Committee specially appointed for that purpose, or the Cathedral Chapter; or it might nominate two or more clergymen, of whom the Bishops of the Province should select one.

III.—The Constitution of a General Synod, and its Functions

In our opinion it is desirable that there should be constituted a General Synod for the entire Province of Australia; and that such Synod should consist of the Bishops and Representatives of the Clergy and Laity of the Church, in the several Colonies comprised within that Province.

To carry this object into effect, it is our opinion that the Metropolitan of the said Province should invite the Church in each Colony to send a representative or representatives, who should, with the several Bishops, be empowered to frame a Constitution for such Synod, and to define its functions. The representatives, thus sent, might bring with them any instructions, which the Church in the several Colonies thought fit to give them, and, subject to those instructions, they should be authorised finally to determine all particulars, connected with the purpose for which they were assembled.

It is also our opinion that these representatives should be empowered, so soon as they have concluded their labours in Conference by framing a Constitution for the proposed Synod and

defining its functions, to form themselves into such Synod, and proceed to business.

The object of such General Synod should, in our opinion, be to maintain the relation of the Church in the Province of Australia to the United Church of England and Ireland, both at home and in the various Colonies; as well as to secure unity of doctrine and discipline between the several branches of the Church in that Province.

To this end although it appears to some of us that more directly controlling powers in the General Synod are, judging from ancient usage, essential to the complete organisation of the Church, we are unanimously of opinion, that such Synod should be authorised amongst other functions:

1. To constitute a Metropolitan Court of Appeal.
2. To frame general rules for the formation of new Dioceses and Provinces.
3. To make rules for the confirmation and due consecration of newly elected Bishops.
4. To communicate with the authorities of the Church at home, and in the various colonies, on all matters relating to the general well-being of the Church.
5. To consult upon any matters which may be brought before the Synod affecting the well-being of the Church in the Province; and to frame regulations thereon, such regulations to take effect in the several Dioceses, from and after the Session of each Diocesan Synod, to which they have been communicated, provided that they be not, and so far only as they are not, disallowed by either the Clergy or the Lay Representatives of the Diocesan Synod in such Session.
6. To take measures for promoting inter-communion between the Church in the Province and other Reformed Episcopal Churches.

IV.—The Constitution and Functions of a Tribunal of the General Synod, and of a Council of Reference

We are of opinion that, besides any right of appeal which may at present exist, and with which we do not desire to interfere, there should be, in all cases in which any question of faith or worship is involved, a right of appeal from the decision of any Bishop or of any Diocesan Tribunal, within the Province of Australia, to a higher Tribunal, which should be constituted by the proposed General Synod.

That such Tribunal of Appeal should consist of the Metropolitan (or some Bishop appointed by him) and of two other Bishops of the Province, and two laymen learned in the law; that the Metropolitan or (in his absence) the senior Bishop should preside; that of the two other Bishops one should be chosen by the Bishops and the other by the Clergy, assembled in General Synod; and that the two laymen should be elected by the lay representatives in such Synod, one at least being a Chancellor of some Diocese of the Province; that whereas vacancies might arise among the elected members, or some of them might be unable to attend, there should in every case be a second Bishop and a second layman named to meet such contingency; and that the Bishop of the Diocese, to which the appellant belongs, should not sit upon the Tribunal when the cause is tried.

That, as respects the parties in any cause brought before the Tribunal of the General Synod, they should continue to enjoy any right of appeal which they at present possess, and desire to retain. But since it is possible that the Tribunals of the various branches of the Colonial Church may arrive at different decisions upon questions of doctrine and discipline, it appears to us, in the uncertainty whether it would be practicable to carry an appeal from the Colonial Church to the Judicial Committee of the Privy Council, to be desirable that for preserving the unity of the whole Church, there should be in England a Council of Reference, to which such questions might from time to time be referred by the General Synod; that such Council should consist of a small definite number of Bishops of the Church at home, and laymen learned in the law, viz. the Archbishop of Canterbury or some other Archbishop or Bishop appointed by him, the Bishop of London, and one layman holding some specified office in connection with the Church, together with two other Bishops and two other laymen, to be elected by the several branches of the Colonial Church in such manner as may be agreed upon among them; and that any decision pronounced by such Council should be binding upon the General and Diocesan Tribunals, unless a judgment at variance therewith should be pronounced by some ecclesiastical court in England.

V.—Tribunal for the Trial of a Bishop

With respect to charges against a Bishop, we are of opinion that the General Synod should constitute a Tribunal for the trial of such charges, and should make regulations for the procedure thereof.

VI.—Oath of Canonical Obedience

We are of opinion that, since the Bishop of Sydney is the Metropolitan of the Province of Australia as defined in his Letters Patent, every Bishop of a Diocese within that Province should, under existing circumstances take at his consecration the oath of Canonical obedience to the Lord Bishop of Sydney as his Metropolitan.

VII.—Resignation of Cures

We are of opinion that, for the purpose of protecting the Church from injury, the Bishop of one Diocese of the Province of Australia should not entertain an application for employment from a clergyman of another Diocese, until his Bishop shall have accepted his resignation, or consented in writing to his removal.

We are also of opinion that in all cases, when a clergyman desires to resign his cure, he should give not less than three months' notice to his Bishop.

We desire to acknowledge the goodness of our Heavenly Father, who, in answer to our prayers and, as we trust, under the gracious influence of His Holy Spirit, has guided us to such entire agreement, in the conclusions at which we have arrived, upon the various subjects under discussion, and we earnestly pray that, as the result of the measures which we recommend, the peace of God may rest abundantly upon the Church, by the promotion of its union and edification,

and by the increased knowledge of our Lord and Saviour Jesus Christ.

F. Sydney, Metropolitan.
Augustus Adelaide.
C. Melbourne.
W. Newcastle.
E. W. Brisbane.
M. Goulburn.
C. H. Tasmania.

Concluding Resolution

That the Lord Bishop of Goulburn, having undertaken, at the request of the Conference, the office of Secretary, be now requested to embody in a Report the resolutions which have been adopted by the Conference, and that a copy of such Report be forwarded by the Metropolitan to His Grace the Archbishop of Canterbury, and to the other Archbishops and Bishops of the United Church of England and Ireland at home and in the Colonies.

DOCUMENT T

THE ORIGINAL CONSTITUTION OF GENERAL SYNOD.

CONSTITUTION OF THE GENERAL SYNOD OF THE CHURCH RECENTLY STYLED THE UNITED CHURCH OF ENGLAND AND IRELAND, AND NOW STYLED THE CHURCH OF ENGLAND IN AUSTRALIA AND TASMANIA.[1]

[Adopted by General Conference, October 23, 1872.]

Preamble.

Whereas it is expedient that the several Dioceses of Sydney, Tasmania, Adelaide, Melbourne, Newcastle, Perth, Brisbane, Goulburn, Grafton and Armidale, and Bathurst, and such other Dioceses as shall hereafter be formed within the limits of Australia and Tasmania shall be united for certain ecclesiastical purposes as

[1] The following Resolution in reference to this Constitution was passed by the General Synod on October 29th, 1872.

That a copy of the Constitution of the General Synod, as agreed to by the General Conference and adopted by the Synod, be entered in a Book to be provided for that purpose, and that the Bishops, Clergy, and Lay Representatives present at the Conference and at the adoption of the Constitution by the Synod, be invited to affix their signatures to the said copy of the Constitution. And that there be also entered in the same Book copies of all Determinations made by this Synod, such copies to be signed by the President in testimony of their accuracy.

In consequence of this Resolution a copy of the Constitution was engrossed on Parchment; and to this Engrossment all the Bishops, and all the Clerical, and all the Lay Representatives (with one exception) of the Dioceses, taking part in the Conference and Synod affixed their signatures. The Diocese of Perth, on account of distance, was represented at the Conference and Synod only by the Bishop. The other Dioceses were represented as follows—Sydney, by five clergymen and five laymen; Tasmania, by three clergymen and two laymen; Adelaide, by two clergymen and two laymen; Melbourne, by three clergymen and four laymen; Newcastle, by four clergymen and two laymen; Brisbane, by two clergymen and three laymen; Goulburn, by three clergymen and three laymen; Grafton an l Armidale, by two clergymen and one layman; and Bathurst, by two clergymen and two laymen.

hereinafter mentioned. And whereas it is expedient to make provision for a General Synod of all such Dioceses of the Church recently styled the United Church of England and Ireland and now styled the Church of England in Australia and Tasmania.

Now We the Bishops and Clerical and Lay Representatives of the said Church in the Dioceses above named present at a General Conference presided over by the Right Reverend Frederic Lord Bishop of Sydney and Metropolitan and held in the City of Sydney in the month of October A.D. 1872 do agree to and accept the following Articles and Provisions as the Constitution of the General Synod of the said Church.

General Synod to be Constituted—Primate.

1. The General Synod shall be constituted of the Bishops of the Dioceses hereinbefore mentioned and of Clerical and Lay Representatives of the Church in the said Dioceses. And such General Synod shall be called "The General Synod of the Dioceses in Australia and Tasmania." And one of the said Bishops shall for all the purposes of this Constitution be known and designated as Primate. And the present Bishop of Sydney shall while continuing to be such Bishop be Primate as aforesaid.

First General Synod—Future General Synods.

2. The Bishops and Clerical and Lay Representatives now assembled shall constitute the First General Synod. And all future General Synods shall be convened and holden in the manner hereinafter provided save in so far as the same may from time to time be altered by any General Synod acting under the provisions hereinafter contained.

General Synod to Consist of Two Houses.

3. The General Synod shall consist of two houses namely the House of Bishops and the House of Representatives. And both Houses shall sit together for deliberation and transaction of business but shall on all occasions vote separately. Provided that if at any time the Bishops shall desire to consult together on any subject under consideration the further discussion of that subject shall be postponed in order to afford the House of Bishops an opportunity for such consultation.

Representatives of Dioceses in General Synod.

4. Every Diocese having under twenty-one Clergymen duly licensed to officiate within it shall be entitled to send two Clerical and two Lay Representatives to any future General Synod. And every Diocese having above twenty and under thirty-one such Clergymen shall be entitled to send three Representatives of each order as aforesaid. And every Diocese having above thirty and under forty-one such Clergymen shall be entitled to send four Representatives of each order as aforesaid. And every Diocese having above forty and under fifty-one such Clergymen shall be entitled to send five Representatives of each order as aforesaid. And every Diocese having above fifty such Clergymen shall be entitled to send six Representatives of each order as aforesaid. And the mode of

electing or otherwise appointing such Representatives and of supplying any vacancies in the number of Representatives when elected or otherwise appointed shall be determined by the Church in each Diocese. Provided always that every Clerical Representative shall be in Priest's Orders and duly licensed to officiate in the Diocese of which he is a Representative and that every Lay Representative shall be of the age of twenty-one years and a Communicant of the Church.

Time and Manner of Holding Synod

5. A period of not more than five years shall elapse between the ordinary meetings of the General Synod but the Primate may at his own discretion and shall at the request in writing of a majority of the other Bishops of the said Dioceses summon a Special Meeting of the General Synod. And for the purposes of holding a meeting of the general Synod the Primate shall by writing under his hand and seal summon the Bishop of each of the said Dioceses and also require such Bishops to convene Representatives of the Church in his Diocese at such time and place as the Primate may deem fit.

President of Synod.

6. The Primate or in his absence the senior Bishop present shall be President of the House of Bishops and of the General Synod. And the President may with the concurrence of the General Synod prorogue and dissolve the same. And the President may take part in any discussion and vote on any question or matter arising therein.

Rules for Business, etc.

7. The General Synod shall have power to make rules for the conduct of all business coming before it and for trying the validity of the election or appointment of any person claiming to be a Representative member thereof.

Powers of General Synod.

8. The General Synod shall have power to make Determinations upon and in respect of the following matters and things concerning the order and good government of the Church that is to say—1. The Constitution of an appellate Tribunal and a Tribunal for the Trial of Bishops. 2. The framing of general rules for the formation of new Dioceses and Provinces. 3. The making of rules for the confirmation and due consecration of future Bishops and the election or appointment of future Primates. 4. The communicating with the authorities of the Church in England and in the various Colonies on matters relating to the general well-being of the Church. 5. The taking of measures for promoting intercommunion with other reformed Episcopal Churches so far as is consistent with the principles of the Church of England. 6. The regulating of the relations of the Church to other branches of the Church of Christ. 7. The promoting of the cause of Home and Foreign Missions in the Church. 8. The consulting upon any matters which may be brought before the Synod affecting the well-being of the Church, and framing regulations thereon. Provided always that no Determination of the General Synod shall be binding upon the Church in any Diocese unless and

until such Determination shall be accepted by the Church in such Diocese. And the mode of accepting in any Diocese the Determinations of the General Synod shall be laid down by the Church in such Diocese.

Synod may Delegate Powers.

9. The General Synod may appoint Committees either under Special Instructions or under such General Regulations as shall from time to time be laid down by the General Synod for the purpose of carrying into effect any Determinations which have been passed by the General Synod.

Mode of Voting and Quorum.

10. Every Determination of the General Synod shall be made by a majority of both Houses thereof and in every division of the House of Representatives the voting shall be by Orders unless two Dioceses by a majority of their Representatives require that the voting shall be by Diocese. And in voting by Dioceses no vote shall be taken as the vote of a Diocese unless assented to by a majority both of the Clerical and Lay Members representing such Diocese. And the presence of at least three Bishops and of one-third of the Clerical and one-third of the Lay Representatives of at least three Dioceses shall be necessary to constitute a meeting of the General Synod. Provided that the power to require the voting by Dioceses shall cease from and after the time when this Constitution shall have been ratified[1] at the next Session of such General Synod by a majority of the Dioceses there represented.

Power to Alter Manner of Holding Meetings of Synod, etc.

11. The General Synod may make Rules altering the manner hereinbefore provided for holding meetings of the General Synod and altering the number of Clerical and Lay Representatives to be respectively summoned to any future General Synod as Members of the House of Representatives. Provided that the number of Lay Representatives of the Church in any Diocese so summoned shall never be less than the number of Clerical Representatives thereof. And the General Synod may make rules necessary for carrying all such alterations as aforesaid into effect.

Defects not to Vitiate Proceedings.

12. No Determination of the General Synod shall be vitiated by reason of any informality in or want of the representation of any Diocese.

Absence, etc., of Bishop.

13. In case of the death, absence or incapacity of any Primate the functions of such Primate shall be exercised by the Senior Bishop of the Dioceses hereinbefore mentioned or referred to and in case of the absence of any Bishop, his functions under this Constitution shall, subject to any provisions made in that behalf by the Church in the Diocese be exercised by a Commissary appointed by him and in case

[1] Resolution ratifying Constitution passed at Second Session of General Synod, October 3rd, 1876.

no such Commissary shall have been appointed or the See be vacant or the Bishop incapable, such functions shall be exercised by the person who shall then be the next in ecclesiastical rank or degree in the Diocese and resident therein. Provided that it shall not be competent for anyone to sit in the House of Bishops in the stead of a Bishop.

ALTERATION OF CONSTITUTION—HOW TO BE MADE.

14. This Constitution may be altered by the General Synod which Shall have power to make Determinations altering it. Provided that every such Determination shall have been first approved of at one Session of the General Synod forthwith communicated to the several Diocesan Synods and assented to by at least two-thirds of such Dioceses as shall have adopted this Constitution and finally passed at the succeeding Session of the General Synod.

DOCUMENT U

GENERAL SYNOD DETERMINATION No. 1—SESSION 1876.

[Made Friday, October, 13th, 1876.]

RULES FOR THE FORMATION OF NEW DIOCESES IN AUSTRALIA AND TASMANIA.

I. ASSIGNMENT OF TERRITORY.

The Territory of a New Diocese shall not extend beyond the limits of one Civil Province.

II. NEW DIOCESES.

A new Diocese may be formed—

(*a*) By dividing an existing Diocese.
(*b*) By assigning to the proposed new Diocese a portion of territory belonging to two or more Dioceses.
(*c*) By assigning to the proposed New Diocese, territory not included in any Diocese.
(*d*) By assigning to the proposed New Diocese, portions of territory belonging to one or more Dioceses, together with territory not included in any Diocese.

III. METHOD OF PROCEEDING TO FORM A NEW DIOCESE.

Any Member of the Church, desirous of promoting the erection of a New Diocese, and resident in the Diocese, or one of the Dioceses, or un-assigned territory concerned in the division, shall, in the first instance, submit a proposal to the Bishop of the Diocese in which he resides, or, if resident in any territory not yet assigned to any Diocese, to the Bishop or Bishops of the Diocese or Dioceses concerned in the division, or in the case described in clause ii., subsection c., to the Primate.

IV. CONSENTS REQUIRED.

The proposal to form such New Diocese shall have the approval of the Bishop and, the concurrence of the Assembly, or Synod, of

every Diocese to be affected thereby, and also be assented to by a majority of the Clerical and Lay Representatives, of the portion, or portions of the Diocese, or Dioceses, intended to be formed into a New Diocese.

And in the case of assigning to a proposed New Diocese territory, not included in any existing Diocese, the consent thereto of the Metropolitan, or if there be no Metropolitan, of the Primate, shall be obtained.

V. Sufficiency of Endowment.

No New Diocese shall be created until the Metropolitan or where there is no Metropolitan, the Primate shall be satisfied that a sufficient endowment has been secured for the maintenance of the See.

VI. Arrangements of Property.

All arrangements with regard to property belonging to any Diocese which it is proposed to divide, shall, subject to due observance of such specific trusts, be made previous to division, and such arrangements shall be final.

VII. Transfer of Territory.

The Bishop or Bishops of any Diocese or Dioceses, out of which it is proposed to create a new See, shall with the consent of the Metropolitan, or where there is no Metropolitan, with the consent of the Primate, transfer to the newly appointed Bishop such part or parts of their Dioceses as shall have been assigned to the New See.

DOCUMENT V

GENERAL SYNOD DETERMINATION No. I—SESSION 1881.

[Made Wednesday, 19th October, 1881.]

GENERAL RULES FOR THE FORMATION OF PROVINCES AND THE REGULATION OF MATTERS CONNECTED THEREWITH.

Bishop of Sydney to be Primate.

1. Without prejudice, and subject to the position and rights of the present Bishop of Sydney as Metropolitan and Primate, the Bishop of Sydney for the time being shall, in conformity with the past history of the Church in Australia, and for the purposes of these Rules, be held to be Primate of the Dioceses constituting the General Synod, with all the powers and authorities conferred on the Primate by the Constitution of the General Synod, and by the Determinations thereof, and shall also be ex-officio President of the General Synod.

Authority of Primate and Metropolitans.

2. The Primate shall have such authority over the Metropolitans of Provinces formed under these rules, and over the Bishops of Dioceses not included in any such Provinces as the General Synod may, within the powers conferred on it by the Constitution, from

time to time determine. And the Metropolitans of Provinces formed under these rules shall have such authority over the Bishops of such Provinces as the General Synod may, within the powers so conferred on it as aforesaid, from time to time determine.

Bishop of Sydney, how Elected.

3. When the See of Sydney shall next become vacant, the Dioceses within the Colony of New South Wales shall be treated as having been formed into a Province under these rules, by the style of the Province of New South Wales, the Bishop of Sydney being Metropolitan thereof. And on the See of Sydney becoming vacant the Synod of the Diocese shall nominate, in such manner as may to it seem expedient, three duly qualified persons to the Bishops of the said Province ; and the said Bishops, or a majority of them, shall nominate two such persons to the Bishops of Australia and Tasmania. And whichever of two such persons the said Bishops, or a majority of them, shall elect, shall be Primate, and shall also be Metropolitan of the said Province, and Bishop of Sydney. Provided always that it shall be competent for the Synod of the Diocese of Sydney, in place of the above nomination of three qualified persons, to appoint a Committee to act with the Bishops of the Province, and with the Bishops of the Dioceses in Australia and Tasmania, or with Committees of such Bishops appointed by them respectively ; and such Diocesan Committee and Bishops, or their Committees, shall have power by concurrent majorities to elect a duly qualified person who shall be Primate, and shall also be Metropolitan of the said Province, and Bishop of Sydney.

Provinces, how to be Formed.

4. When the Bishops, Clergy and Laity of three or more Dioceses shall desire to be formed into a Province, such desire being evidenced by Resolutions duly passed by the Synods of the several Dioceses, they shall submit to the Primate proposals for the formation of the Province, which proposals shall include a provision, if the Province is conterminate with a Colony, for making the Capital City of the Colony, the See of the Metropolitan Bishop, and if the Province is not conterminate with a Colony then for leaving the determination of the See of the Metropolitan Bishop to the Bishops of the proposed Province, or the majority of them. And the Primate shall forthwith bring such proposals before the Bishops of Australia and Tasmania, and if the proposals are assented to by a majority of such Bishops, the formation of the Province shall take place ; but if the proposals are nor assented to by a majority of such Bishops, the matter shall be referred to the General Synod at its next Meeting, whether ordinary or specially called for the purpose of dealing with the reference.

5. The formation of a Province shall be certified by means of a Declaration in writing under the hand and seal of the Primate, and under the hands and seals of the Bishops of the Province to be formed. And there shall be annexed to such Declaration a Schedule containing the proposals for the formation of the Province as assented to, and the Province shall be taken to be formed from the date of the Declaration, which Declaration shall be executed in

duplicate, one part to be kept in the Registry of the Diocese of Sydney, and the other part to be kept in the Registry of the Metropolitan Diocese of the Province.

Metropolitans, how to be Elected.

6. Whenever the See of the Metropolitan of a Province, except in the case of Sydney, shall become vacant, the Synod of the Diocese shall nominate, in such manner as may to it seem expedient, two duly qualified persons to the Bishops of the Province. And whichever of such two persons the said Bishops, or a majority of them, shall elect, shall be the Metropolitan, and Bishop of the Metropolitan See. Provided always that it shall be competent for the said Synod, in place of the above nomination of two qualified persons, to appoint a Committee to act with the Bishops of the Province or with a Committee appointed by such Bishops, and such Diocesan Committee and the said Bishops, or their Committee, shall have power by concurrent majorities to elect a duly qualified person who shall be Metropolitan of the said Province.

Changes in Provinces.

7. No change shall be made in a Province formed under these rules as to its extent or otherwise, except with the sanction and under the direction of the General Synod.

Rule III of Determination 1 (1872) Repealed.

8. Rule III of Determination I of General Synod, Session 1872, is hereby repealed.

Provincial Synods, how Formed.

9. So soon as conveniently may be after the formation of a Province, the Bishops and Clerical and Lay Representatives of the Church in the several Dioceses of the Province shall meet under the Presidency of the Metropolitan thereof, and shall agree upon the Constitution of the Provincial Synod of the said Province. But it shall not be necessary to the action of the Province, or of the Metropolitan or Bishop thereof, that any such Constitution should have been first agreed upon.

10. That such Constitution shall, as nearly as the circumstances of the case will permit, be framed on the plan of the Constitution of the General Synod. Provided always, that the powers of the Provincial Synod shall be limited to matters and things concerning the order and good Government of the Church in the Province ; and that no ordinance or other Determination of the Provincial Synod shall contravene any Determination of the General Synod. And provided also, that due provision shall be made to enable the Provincial Synod to accept the Determinations of the General Synod.

Interpretation Clause.

11. Wherever the words " Synod of the Diocese " are used in this Determination they shall be read as including the equivalent Body in Dioceses in which no Diocesan Synod exists.

DOCUMENT W

THE CONSTITUTION OF THE CHURCH OF ENGLAND IN AUSTRALIA.

Draft Bill as Passed by Convention (in October, 1926) for Consideration by the Diocesan Synods.

[This is referred to in the text as the *Amended Draft Bill*.]

A BILL.

To give legal force and effect to a constitution for the Church of England in Australia and to make provision with respect to property in connection therewith ; to repeal [the Church of England Constitutions Act Amendment Act of 1902] and certain other acts ; to amend [ ] and certain other Acts ; and for purposes connected therewith.

Whereas a general convention of the Church of England in Australia has assented to a constitution for that Church in accordance with the provisions set out in Schedule One of this Act, and whereas legal force and effect cannot be given to the constitution so far as regards the management of property without the consent of the Legislature :

Be it therefore enacted.....as follows :—

Short Title.

1. This Act may be cited as the " Church of England in Australia Act 192 ."

Constitution of the Church. Schedule One.

2. The constitution set forth in Schedule One of this Act shall be the constitution of the Church of England in Australia, and shall come into operation as provided in section fifty-nine thereof.

Repeals and amendment. Schedule Two.

3. (1) The Acts mentioned in Schedule Two of this Act are to the extent therein expressed hereby repealed.

Schedule Three.

(2) The Acts mentioned in Schedule Three of this Act are hereby amended as therein provided.

(3) No repeal or amendment of any Act mentioned in Schedule Two or Schedule Three of this Act shall take effect until the constitution set forth in Section One of this Act comes into operation.

SCHEDULE ONE.

The Constitution of the Church of England in Australia.

Chapter I.—THE DECLARATIONS.

Declarations.

1. The Church of England in Australia humbly relying on the blessing of Almighty God has in general convention at Sydney in the year of our Lord one thousand nine hundred and twenty-six assented to the solemn declarations set forth in this chapter as binding heretofore and henceforth on this church.

2. The Church of England in Australia being a part of the One Holy Catholic and Apostolic Church and in communion with the Church of England in England will ever remain and be in communion with the Church of England in England and with national regional or provincial churches maintaining communion with that church, so long as communion is consistent with the solemn declarations set forth in this chapter.

The Catholic and Apostolic Church.

3. This church doth receive all the canonical scriptures of the Old and New Testaments as being the ultimate rule and standard of faith given by inspiration of God and containing all things necessary for salvation.

The Bible.

4. This church doth hold and will continue to hold the faith of Christ as professed by the One Holy Catholic and Apostolic Church from primitive times and in particular as set forth in the creeds known as the Nicene Creed and the Apostles' Creed.

Faith.

5. This church will ever obey the commands of Christ, teach His doctrine, administer His sacraments of holy baptism and holy communion, follow and uphold His discipline and preserve the three orders of bishops priests and deacons in the sacred ministry.

Doctrine, sacraments and ecclesiastical orders.

6. This church doth retain and approve the book of common prayer and the doctrine and principles contained therein and will not in any revision of the book of common prayer or otherwise make or permit any alteration which would change the character of this church as shown by its assent to this as well as to the other solemn declarations set forth in this chapter.

The Book of Common Prayer.

Chapter II.—THE GOVERNMENT OF THE CHURCH.

7. Subject to this constitution this church has plenary authority and power to make canons ordinances and rules for the order and good government of this church and to administer the affairs thereof.

Authority of the Church.

The authority and power of this church may be exercised by the several synods and tribunals in accordance with the provisions of the constitution, but nothing in the constitution or in any canon ordinance or rule shall limit or affect the powers and functions inherent in the episcopate or interfere with the exercise by a bishop priest or deacon of any power or function inherent in him by virtue of his consecration or ordination.

8. A diocese shall in accordance with the historic custom of the One Holy Catholic and Apostolic Church continue to be the unit of organization of this church and shall be the see of a bishop with his flock therein.

Diocese.

9. The diocesan bishop of each diocese shall be elected as may be prescribed by or under the constitution of the diocese, provided that the election shall as to the canonical fitness of the person elected be subject to confirmation as may be prescribed by canon of the general synod.

Diocesan bishops.

The diocesan bishop of each diocese shall have such authorities powers rights and duties as may be conferred or imposed on him by this constitution or by or under the constitution of the diocese.

During any vacancy of the office or during the absence from Australia or incapacity of the diocesan bishop of any diocese, the authorities powers rights and duties of the bishop shall be exercised by such person as may be authorised by or under the constitution of the diocese.

10. The metropolitan (to be called archbishop) of each province shall hold office as may be prescribed by the constitution of the province or by ordinance of the provincial synod. **Metropolitans.**

The metropolitan of each province shall have such authorities powers rights and duties as may be conferred or imposed on him by this constitution or by the constitution of the province or by ordinance of the provincial synod.

During any vacancy of the office or during the absence from the province or the incapacity of the metropolitan of any province, the authorities powers rights and duties of the metropolitan shall be exercised by the senior bishop of the province being at the time in the province and able and willing to act, the seniority in every case being determined by the date of consecration.

11. The primate of Australia shall be elected and hold office as may be prescribed by canon of the general synod. **Primate.**

The primate shall have such authorities powers rights and duties as may be conferred or imposed on him by the constitution or by canon of the general synod.

During any vacancy of the office or during the absence from Australia or incapacity of the primate, the authorities powers rights and duties of the primate shall be exercised by the senior metropolitan being at the time in Australia and able and willing to act, or if there is no such metropolitan able and willing to act, then by the senior diocesan bishop being at the time in Australia and able and willing to act, the seniority in every case being determined by the date of consecration.

Chapter III.—THE GENERAL SYNOD.

The House of Bishops and the House of Representatives.

12. The general synod shall consist of a house of bishop's and a house of representatives. **The synod.**

Both houses shall sit together in full synod and deliberate and transact business therein, but if at any time either house by a majority of its members voting expresses its wish to consider separately any matter in debate, the further discussion of the matter shall be postponed until there has been an opportunity of separate consideration.

13. The house of bishops shall be composed of the primate the metropolitans the diocesan bishops and the coadjutor bishops. **House of bishops.**

A coadjutor bishop shall not be entitled to vote except in the absence of the bishop to whom he is coadjutor.

14. (1) The house of representatives shall be composed of clerical and lay representatives of each diocese. **House of representatives.**

The clerical and lay representatives of a diocese shall be elected or appointed, and any vacancy in the place of a representative may be

filled, in such manner as may be prescribed by or under the constitution of the diocese.

The election or appointment shall be held or made once at least in every three years, and the number of representatives shall be as set out in the first table annexed to the constitution.

Every bishop or priest who holds a license from a diocesan bishop shall be qualified to be a clerical representative of a diocese, whether he does or does not reside therein.

Every layman who is not under the age of twenty-one years and is a communicant of this church shall be qualified to be a lay representative of a diocese, whether he does or does not reside therein.

(2) The bishop of each diocese shall certify and transmit to the primate a list of the names and addresses of the clerical and lay representatives of the diocese.

In the event of any change in the representation of a diocese the bishop shall certify and transmit to the primate a supplementary list showing the change.

Any list or supplementary list so certified shall be evidence that a representative therein named is entitled to be such representative, except so far as any supplementary list shows that he has ceased to be a representative.

Claim to membership.

15. The general synod may determine in such manner as it may deem proper whether any person who claims to be a member of the synod or of either house thereof is entitled to be such member, and may determine whether he has been duly and lawfully elected appointed or summoned to the synod.

Failure to return representatives.

16. (1) The general synod may proceed to the despatch of business notwithstanding the failure of any diocese to provide for its representation in the synod.

(2) No canon rule act or exercise of power of the general synod shall be vitiated by reason only of the fact that any person to be elected appointed or summoned to the synod has not been elected appointed or summoned, or by reason only of any informality with respect to the election appointing or summoning.

President.

17. The primate or in his absence the senior archbishop present, or if there is no archbishop present, the senior diocesan bishop present shall be president of the house of bishops and of the general synod, the seniority being determined by the date of consecration.

The president may take part in any discussion and vote on any question or matter.

The president may with the concurrence of the general synod prorogue and dissolve the synod.

Quorum.

18. Until the general synod otherwise prescribes, the presence of at least five diocesan bishops and at least fifteen clerical representatives representing not less than seven dioceses and of at least fifteen lay representatives representing not less than seven dioceses shall be necessary to constitute a meeting of the general synod for the exercise of its powers.

Voting.

19. No question shall be deemed to be carried by the synod unless it is carried by both houses.

No question shall be deemed to be carried by the house of bishops unless there is in its favour a majority of the bishops present.

No question shall be deemed to be carried by the house of repre-

sentatives unless there is in its favour a majority of the clerical and lay representatives voting thereon, or if the clerical and lay representatives vote by orders, there is in its favour a majority of the clerical representatives voting thereon and also a majority of the lay representatives voting thereon. If twenty members then present require the vote to be taken by orders, the vote shall be taken accordingly.

All questions shall be put first to the house of representatives and then to the house of Bishops.

Powers.

Unconditional powers.

20. (1) The general synod may make canons for the order and good government of this church with respect to—

(a) the consecration of bishops ;

(b) the oaths declarations and assents to be required of bishops priests and deacons ;

(c) the furtherance of union with other Christian communions ;

(d) the regulation management and disposal of property moneys and revenues under the control of the general synod or of any committee board or commission appointed by the synod, subject to the trusts affecting the same whether original or as varied in accordance with the trust instrument or by any Act of Parliament, and the keeping and rendering of proper accounts ;

(e) matters directed or permitted by the constitution to be prescribed by canon of the general synod, and not directed or permitted by the constitution to be prescribed by ordinance of any other synod ;

(f) matters referred to the general synod by any diocesan synod or synods for the purposes of this section, but so that the canon shall extend only to the diocese of any synod which refers the matter or which afterwards adopts the canon ;

(g) matters incidental to the execution of any power vested by the constitution for the purposes of this section in the general synod.

(2) Where an ordinance of any other synod is inconsistent with a canon made under the powers vested by this section in the general synod, the ordinance shall to the extent of the inconsistency be invalid.

Provisional powers.

21. (1) The general synod may make provisional canons for the order and good government of this church with respect to—

(a) the appointment of coadjutor bishops ;

(b) the general standards of education and fitness to be attained by persons who desire to be admitted to holy orders or to the ministry of this church ;

(c) the promotion of sound learning and theological study among the clergy and laity ;

(d) the promotion of the cause of home and foreign missions ;

(e) the commendation of forms of service not contained in the book of common prayer for use on special or commemorative occasions ;

(f) the provision of superannuation and provident funds for clerical and lay officers ;

(g) insurance against any loss or damage whether by fire or other-

wise in respect of any insurable church trust property and against any risk or liability in respect of any person in the service or employment of this church ;

(h) matters referred to the general synod by any diocesan synod or synods for the purposes of this section, but so that the canon shall only extend to the diocese of any synod which refers the matter or which afterwards adopts the canon ;

(i) matters incidental to the execution of any power vested by the constitution for the purposes of this section in the general synod.

(2) Where any canon made under the powers vested by this section in the general synod is inconsistent with an ordinance of the synod of any diocese, the canon shall to the extent of the inconsistency not apply to the diocese.

(3) Where the ordinance is made after the canon the fact that the canon ceases to apply to the diocese shall not—

(a) affect the previous operation of the canon or anything duly suffered done or commenced to be done under the canon before it ceased to apply ;

(b) affect any right privilege obligation or liability acquired accrued or incurred under the canon before it ceased to apply.

If the ordinance is passed by a majority of the clerical and lay representatives voting by orders, the concurrence of the bishop shall not be necessary, provided that nothing in this sub-section shall authorise an ordinance to be made without such concurrence except for the purpose of excluding the application of the canon.

Canons. 22. A canon shall be made by a bill passed in accordance with the standing orders.

The bill shall be initiated by a motion for leave to bring in the bill and shall not be passed until the bill has been read a first and second time considered in committee after the second reading, and read the third time.

Rules. 23. (1) The general synod may make rules prescribing anything necessary or convenient to be prescribed for carrying out and giving effect to any canon or for controlling and regulating the administration of the affairs of the synod, and in particular may make rules prescribing—

(a) the procedure for any election or appointment to be made by or under the authority of the synod to any office ;

(b) the authorities powers rights and duties of any officer committee board or commission of the synod.

A rule shall be made by resolution after notice has been duly given in accordance with the standing orders.

Resolutions. (2) The general synod may pass resolutions declaring the view of the synod on any matter affecting this church or affecting spiritual moral or social welfare.

Standing orders. (3) The general synod may regulate the conduct of the business of the synod under standing orders or otherwise as it may deem proper.

Sessions.

Ordinary session. 24. (1) Until the general synod otherwise prescribes, there shall be an ordinary session of the general synod at least once in every three years at such time and place as the synod may

by resolution appoint or failing any such resolution then as the standing committee of the synod may by resolution appoint.

(2) A special session of the general synod shall be convened by the primate on the application in writing of not less than one half of the diocesan bishops. Special session.

(3) At least three months before the time for any session of the general synod the primate shall by mandate under his hand and seal summon the diocesan bishops, and require them to convene the prescribed number of clerical and lay representatives of their respective dioceses at the appointed time and place. Mandate.

(4) The procedure and powers of the general synod in a special and an ordinary session shall be the same, provided that in a special session no business other than the business specified in the mandate shall be transacted. Procedure and powers.

Records and Seal.

25. The proceedings of the general synod shall be duly recorded and be authenticated by the signature of the president. Proceedings.

Every canon of the general synod shall be printed in duplicate, and each duplicate shall be compared and certified as correct by the president, the chairman of committees and the secretaries of the synod, authenticated by the official seal, and filed in books.

26. (1) The general synod shall have an official seal, which shall be judicially noticed. Seal.

The seal shall not be used to authenticate any canon rule resolution instrument or document or any copy thereof except upon a resolution of the synod or of the standing committee of the synod and by and in the presence of at least three members of the committee.

(2) Any canon rule resolution instrument or document authenticated by the official seal shall be admissible in evidence without further proof.

A copy of any canon rule or resolution authenticated by the official seal and purporting to be certified by at least three members of the standing committee as a true copy shall be evidence of the canon rule or resolution and be admissible in evidence without further proof.

Standing Committee.

27. There shall be a standing committee of the general synod which shall consist of so many members not less than ten as may be prescribed by any rule of the synod. Composition.

The members of the committee shall be elected or appointed and shall hold office, as may be prescribed by any rule of the synod.

The seal books and records of the general synod shall be entrusted to the standing committee for safe keeping.

Committees Boards and Commissions.

28. The general synod may appoint any committee board or commission that it may deem proper for carrying out or giving effect to any canon rule or resolution of the synod. Appointment.

Unless otherwise provided by any canon or rule of the synod—

(a) the committee board or commission may include or consist of persons who are not members of the synod ;

(b) the members of the committee board or commission shall be

elected or appointed and shall hold office as may be determined by resolution of the synod but shall not, unless the resolution so provides, cease to be members of the committee board or commission by reason only of ceasing to be members of the synod ;

(c) the committee board or commission shall have such powers and duties as may be conferred or imposed by resolution of the synod;

(d) the committee board or commission may, if the synod by resolution so directs, continue to exist and to exercise and perform its powers and duties, until the expiration of the first week of the next following ordinary session of the synod, notwithstanding the prorogation or dissolution of the synod by which the committee board or commission is appointed.

Chapter IV.—THE PROVINCES AND PROVINCIAL SYNODS.

Provinces.

Existing provinces. 29. Each province in Australia shall subject to the constitution continue as at the date on which the constitution takes effect, until altered in accordance therewith.

New provinces. 30. A new province may be formed by any four or more dioceses becoming united for that purpose, provided that the formation of the province is approved by ordinance of the diocesan synod of each of such dioceses, and ratified by canon of the general synod.

The province shall not be deemed to be formed until such ratification.

Alteration of provinces. 31. A province may be altered in accordance with the constitution of the province, provided that the alteration shall not take effect until ratified by canon of the general synod.

Provincial Synods.

Constitution of existing provinces. 32. The constitution of each province in Australia shall subject to this constitution continue as at the date on which the constitution of this church takes effect, until altered in accordance therewith.

Constitution of new provinces. 33. The constitution of a new province may provide either for a provincial synod or for a provincial council, and in either case may contain such provisions as the diocesan synod of each of the dioceses to be united in the province may think fit, provided that the constitution shall not take effect until ratified by canon of the general synod.

Alteration of constitution. 34. The constitution of a province may be altered in accordance therewith, or with the consent of all the dioceses of the province given by ordinance of the synod of each diocese, provided that the alteration shall not take effect until ratified by canon of the general synod.

This section extends to altering the constitution of a province by substituting a provincial council for a provincial synod, or by substituting a provincial synod for a provincial council.

Powers. 35. A provincial synod shall have such powers for the order and good government of this church within the province as may be prescribed by the constitution of the province.

Chapter V.—THE DIOCESES AND DIOCESAN SYNODS.

Dioceses.

Existing dioceses.

36. Each diocese in Australia shall subject to the constitution continue as at the date on which the constitution takes effect, until altered in accordance therewith.

New dioceses.

37. (1) A new diocese may be formed in any of the following ways, that is to say—

(a) by separation of territory from a diocese ;
(b) by the union of two or more dioceses or parts of dioceses ;
(c) out of territory in Australia which is not part of any diocese, and either out of such territory alone or out of such territory together with any diocese or part of a diocese ;
(d) as a missionary diocese whether within or outside Australia.

(2) Where a new diocese is formed by separation of territory from a diocese or by the union of two or more dioceses or parts of dioceses, the proposal to form the new diocese may be initiated by the diocese or dioceses concerned or by the province, if any, in which the diocese or dioceses are included, but the new diocese shall not be formed unless such diocese or dioceses and province, if any, agree by ordinance of their respective synods that the new diocese shall be formed, and thereafter apply to the general synod to ratify the formation of the new diocese.

In any case coming within this subsection a new diocese shall not be deemed to be formed until the formation of the diocese is ratified by or under canon of the general synod.

(3) In any other case the proposal to form a new diocese may be initiated in the general synod, but where any diocese or part of a diocese is included, the new diocese shall not be formed unless the synod of the diocese and the synod of the province, if any, concerned concurs by ordinance in the inclusion.

In any case coming within this subsection, if a diocese or part of a diocese is included, the new diocese shall not be deemed to be formed, until the synod of the diocese and the synod of the province, if any, concerned, concur by ordinance in the inclusion, and subject to such concurrence the new diocese shall be deemed to be formed as the general synod may by canon determine, but if a diocese or part of a diocese is not included, the new diocese shall be deemed to be formed as the general synod may by canon determine.

(4) Upon the formation of a new diocese any church trust property allocated to the new diocese by ordinance of the synod of any diocese concerned, and any church trust property allocated to the new diocese by canon of the general synod in any case where a diocese is not concerned, shall by virtue of the ordinance or canon, as the case may be, and without any other assurance in the law, be held for the new diocese and be vested in the trustees then or thereafter appointed for the purpose and upon and subject to the trusts affecting the same, but for the use benefit and purposes of this church within the new diocese.

Alteration of dioceses.

38. (1) A diocese may by ordinance surrender any part of its territory to any other diocese, and that diocese may by ordinance accept the territory so surrendered.

The surrender and acceptance may be made upon such terms and conditions, including the allocation of church trust property, as may be agreed upon by the dioceses concerned.

The alteration of boundaries under this sub-section shall take effect on the acceptance.

(2) A diocese may by ordinance alter its boundaries so as to include territory which is not part of any diocese or so as to exclude territory otherwise than by surrender to another diocese.

The alteration of boundaries under this sub-section shall not take effect until ratified by or under canon of the general synod.

Admission of dioceses.

39. The general synod may by canon admit to the synod any diocese the territory of which is partly or wholly outside Australia and may upon such admission impose such terms and conditions, including the extent of representation in the house of representatives, as the synod thinks fit.

Diocesan Synods.

Constitution of existing dioceses.

40. The constitution of each diocese in Australia shall subject to this constitution continue as at the date on which the constitution of this church takes effect, until altered in accordance therewith.

Constitution of new dioceses.

41. The constitution of a new diocese shall provide for the election or appointment of the first bishop of the diocese and may adopt all or any of the provisions set forth in the second table annexed to this constitution with or without modifications and additions, provided that the constitution shall not take effect until ratified by or under canon of the general synod.

Missionary and small dioceses.

42. In a missionary diocese or in a diocese in which there are less than ten licensed priests of the diocese there may in lieu of a diocesan synod and until the general synod by or under any canon otherwise prescribes be a provisional synod with such constitution as the general synod thinks fit.

In any diocese in which at the date of the convention mentioned in section one of this constitution there was no provision for a synod, the bishop may, until the general synod otherwise prescribes, be elected in accordance with the provisions under which the bishop in office at that date was elected.

Alteration of constitution.

43. The constitution of a diocese may be altered in accordance therewith or by ordinance of the diocesan synod adopting all or any of the provisions set forth in the second table annexed to this constitution, or it may be altered as permitted by or under any canon of the general synod.

Powers.

44. (1) A diocesan synod may make ordinances for the order and good government of this church within the diocese.

This sub-section shall not be deemed to be a direction or permission to prescribe by ordinance of a diocesan synod within the meaning of paragraph (e) of sub-section one of section twenty of this constitution, but otherwise nothing in this section shall limit any powers of a diocesan synod under this constitution or under the constitution of the diocese.

(2) A diocesan synod may refer to the general synod any matter affecting this church either for the purposes of section twenty or for the purposes of section twenty-one of this constitution.

Chapter VI.—THE TRIBUNALS.

Tribunals. Diocesan tribunals.

45. There shall be a diocesan tribunal of each diocese, the special tribunal and the supreme tribunal.

46. (1) A diocesan tribunal shall consist of a president and not less than two other members as may be prescribed by ordinance of the synod of the diocese.

The president and members shall be elected in such manner, hold office for such period, have such qualifications and be subject to such disqualifications, as may be prescribed by ordinance of the synod of the diocese.

In any province the provincial synod if so requested by the synod of a diocese may by ordinance of the provincial synod prescribe any matter directed or permitted by this section to be prescribed by ordinance of the synod of the diocese, provided that the synod of the diocese may at any time otherwise prescribe.

(2) A diocesan tribunal shall in the case of a person licensed by the bishop of the diocese, or in the case of any lay officer of the diocese, have jurisdiction to hear and determine charges of breaches of faith ritual ceremonial or discipline, and of such offences as may be prescribed by any canon ordinance or rule.

(3) In matters involving any question of faith ritual ceremonial or discipline an appeal shall lie from the determination of a diocesan tribunal to the supreme tribunal.

In other matters an appeal shall lie in such cases as may be permitted by ordinance of the diocesan synod or by canon of the general synod from the determination of a diocesan tribunal to the supreme tribunal.

Special tribunals.

47. (1) The special tribunal shall consist of a president and not less than six other diocesan bishops chosen in such manner as may be prescribed by canon of the general synod.

The primate shall be the president, or if he is not entitled to act, the metropolitan or bishop who would exercise the authorities powers rights and duties of the primate, if the office were then vacant, shall be the president.

No person by or against whom the charge is brought shall be a member of the tribunal.

(2) The special tribunal shall have jurisdiction to hear and determine charges against any diocesan bishop of breaches of faith ritual ceremonial or discipline.

(3) An appeal shall lie from the determination of the special tribunal to the supreme tribunal.

Supreme tribunals.

48. (1) The supreme tribunal shall consist of a president and six other members three of whom shall be bishops or priests and three of whom shall be laymen.

The president shall either be or have been a bishop of a see and shall be elected by the general synod.

The other members shall be elected in the general synod as follows, that is to say, two by the house of bishops, two by the clerical representatives and two by the lay representatives. In each case one of the two members so elected shall be a bishop or priest and one a layman.

A bishop or priest shall not be a member unless he is of at least fifteen years' standing in holy orders.

A layman shall not be a member unless he is qualified to be a lay representative of a diocese and is or has been a justice of the High Court of Australia, a judge of the Supreme Court of a State, or a practising barrister or solicitor, of at least ten years' standing, of the High Court of Australia or of the Supreme Court of a State.

The members of the tribunal shall be elected in such manner hold office for such period and be subject to such disqualifications as may be prescribed by or under canon of the general synod.

No party to an appeal shall be a member of the tribunal for any purpose of the appeal and his place shall be filled for the purpose of the appeal by the other members co-opting a person qulaified for the office.

If any vacancy of office arises while the general synod is not in session the vacancy shall be filled by the other members co-opting a person qualified for the office, and any person so co-opted shall only hold office until the next ordinary session of the general synod, provided that if any appeal is then pending he shall continue to hold office for the purpose of the appeal.

(2) The supreme tribunal shall have jurisdiction to hear and determine appeals from any determination of the special tribunal and from any determination of any diocesan tribunal in any case in which an appeal lies therefrom to the supreme tribunal.

Every appeal to the supreme tribunal shall be by way of re-hearing.

Before determining any appeal the supreme tribunal may if it thinks fit consult the Consultative Body of the Lambeth Conference.

49. (1) A tribunal shall make such recommendation as it thinks just in the circumstances, but shall not recommend any sentence other than one or more of the following, that is to say, monition, suspension from office, expulsion from office, deprivation of rights and emoluments appertaining to office, deposition from holy orders.

Sentence.

The recommendation of a diocesan tribunal, or of the supreme tribunal on an appeal from a diocesan tribunal, shall be made to the bishop of the diocese concerned.

The recommendation of the special tribunal, or of the supreme tribunal on an appeal from the special tribunal, shall be made to the primate, provided that where the charge is against the primate, the recommendation shall be made to the metropolitan or bishop who would exercise the authorities powers rights and duties of the primate, if the office were then vacant.

(2) The person to whom the recommendation is made shall give effect thereto, provided that if any sentence is recommended, he may with the consent of the tribunal mitigate or abstain from pronouncing the sentence.

(3) The provisions of the constitution with respect to an appeal from the determination of a tribunal shall extend to and authorise an appeal from a recommendation or sentence.

50. Where a charge is pending before a tribunal against any person licensed by the bishop of a diocese, the bishop with the concurrence of the diocesan council may suspend such person from the duties of his office until the determination of the charge, and may make such arrangements for the performance of the duties of the office as may be authorized by any canon ordinance or rule or in the absence of such canon ordinance or rule as the bishop may deem proper.

Pending charge.

51. For the purpose of securing the attendance of witnesses and the production of documents and for the examination of witnesses on oath or otherwise a tribunal shall have the powers conferred upon arbitrators by any Act of Parliament in force in the State or territory in which the tribunal sits. State Arbitration Act.

Chapter VII.—THE PROPERTY OF THE CHURCH.

52. (1) There shall be a body corporate to be known as the corporate trustees of the general synod of the Church of England in Australia, and in this section referred to as the corporate trustees. Corporate trustees of the general synod.

The body corporate shall be deemed to be constituted as soon as this constitution takes effect.

(2) The corporate trustees shall have perpetual succession and a common seal, may sue and be sued in and by their corporate name, and may acquire hold and dispose of any real and personal property or any estate or interest therein.

(3) The corporate trustees shall not dispose of any real or personal property or any estate or interest therein except under a power conferred by the instrument, if any, creating the trust or by law, or under authority conferred by a canon of the general synod.

(4) The corporate trustees shall consist of seven or such less number of persons as may be prescribed by canon of the general synod, and such persons shall be elected or appointed and hold office, and may be removed therefrom, as may be prescribed by canon of the general synod.

(5) The corporate trustees shall have such authorities powers and duties as may be conferred or imposed by canon of the general synod.

(6) The corporate trustees may be appointed to be the trustees of any church trust property, provided that where the property is under the control of the synod of a diocese the appointment shall not be made unless the consent of the synod is first obtained.

(7) Where any church trust property is under the control of of the synod of a diocese nothing contained in this section or done thereunder shall remove the property from its control or place the property under the control of the general synod. Property under control.

53. All church trust property shall be held upon the trusts affecting the same, and subject thereto and to any Act of Parliament shall be held in accordance with this constitution. Church trust property.

Chapter VIII.—THE BOOK OF COMMON PRAYER.

54. (1) Where an alteration of the book of common prayer is made by the competent authority of the Church of England in England the general synod may by canon permit the use by this church of the alteration, but no permission given by the canon shall have any effect in any diocese or parish until the synod of the diocese by ordinance provides that the alteration may be used in the diocese or parish. Revision in England.

The synod of the diocese may by ordinance make such provision as it thinks proper for ensuring that the use of the alteration shall not be permitted in any parish against the wish of the parishioners.

(2) At any time before the first ordinary session of the general synod the synod of any diocese may by ordinance permit the use in the diocese of any alteration made by the competent authority of the Church of England in England and the ordinance may continue in force until the general synod by canon otherwise prescribes.

(3) This section shall apply to an alteration made before or after the date on which the constitution takes effect.

Revision in Australia.

55. (1) Except as provided in section fifty-four of this constitution no alteration of the book of common prayer shall be made or permitted except by a canon of the general synod passed and approved in accordance with the provisions of this section.

(2) The canon shall not be made except on a bill which has been recommended by the house of bishops after the report of a special commission appointed by the general synod to consider in what respects, if any, the book of common prayer should be altered.

(3) At least six months before the session of the general synod in which the motion for leave to bring in the bill is made, a copy of the bill and report shall be transmitted to the diocesan bishop of each diocese, or if there is a vacancy in the office or if the bishop is absent from Australia, to the person authorised to administer the affairs of the diocese, together with a request that the same may be published or otherwise notified in the diocese.

(4) Unless two-thirds of the diocesan synod within five years assent by ordinance to the canon and the synods so assenting contain a majority of the priests licensed in this church the canon shall be deemed to have been rejected and the proposed alteration shall not be further considered unless another bill is initiated in accordance with the provisions of sub-sections two and three of this section.

(5) If two-thirds of the diocesan synods within five years assent by ordinance to the canon and the synods so assenting contain a majority of the priests licensed in this church the canon shall be considered by the general synod at its next ordinary session and shall come into force if two-thirds of the members of the house of bishops two-thirds of the clerical representatives voting and two-thirds of the lay representatives voting approve by canon and the general synod by resolution declares that such assent and approval have been given.

(6) No alteration of the book of common prayer made under this section shall affect any diocese or the bishop clergy or laity thereof unless the diocesan synod has by ordinance assented to the canon.

Chapter IX.—THE ALTERATION OF THE CONSTITUTION.

Unalterable provisions.

56. The provisions of chapters one and seven of this constitution and the provisions of this section shall not be altered, provided that this section shall not preclude an alteration of the name of this church.

Alteration by consent of all dioceses.

57. The following provisions of this constitution, that is to say, section twenty, chapter six, chapter eight, this section and section sixty-three, may be altered by canon of the general synod, provided that the alteration shall not come into force until all the diocesan synods by ordinance assent to the canon and the general synod by resolution declares that such assent has been given.

58. (1) Any alteration of the name of this church and of any provision of this constitution other than the provisions mentioned in section fifty-seven may be made by a constituent canon of the general synod. Constituent canon.

(2) A constituent canon shall not be made unless at least six months before the session of the general synod in which the motion for leave to bring in the bill is made, a copy of the bill is transmitted to the diocesan bishop of each diocese, or if there is a vacancy in the office or if the bishop is absent from Australia, to the person authorised to administer the affairs of the diocese, together with a request that the same may be published or otherwise notified in the diocese.

(3) A constituent canon shall not be made unless the general synod passes it by a majority of the bishops voting thereon in the house of bishops and by the following majorities of the representatives voting thereon in the house of representatives, that is to say—

(a) a majority of clerical representatives ;
(b) a majority of lay representatives ;
(c) a majority of clerical representatives and a majority of lay representatives of a majority of the dioceses.

Chapter X.—THE OPERATION OF THE CONSTITUTION.

59. (1) The constitution shall take effect on and after a day to be appointed in accordance with this section. Commencement.

The day shall not be appointed until the Parliaments of five States have passed Acts for giving effect to the constitution.

The day shall be appointed by a deed signed by the diocesan bishops of not less than eighteen dioceses in Australia, declaring that the Church of England within their respective dioceses acting through a synod or convention specially summoned for the purpose has assented to the constitution.

The bishops signing the deed shall include at least two metropolitans.

(2) The day appointed shall be notified in the Government Gazette of each State by any one or more of the diocesan bishops by whom the deed appointing the day is signed.

A copy of the Government Gazette of any State containing a notification which purports to be signed by any one or more of the diocesan bishops shall be conclusive evidence that the day has been duly appointed in accordance with this section.

(3) The diocesan bishops signing the deed shall be a commission for convening the first session of the general synod, and notwithstanding any other provision of the constitution the commission may do or cause to be done anything necessary or convenient for the convening and holding of the session.

The commission shall appoint the time and place for the session, and shall at least three months before the time for the session in such manner as the commission deems proper summon the diocesan bishops of the dioceses to which the constitution applies, and require them to convene the prescribed number of clerical and lay representatives of their respective dioceses at the appointed time and place.

60. (1) The constitution shall apply to every diocese in Australia which assents to the constitution, whether before or after the constitution takes effect, and to every diocese formed or admitted to the general synod under the constitution. Application of the constitution.

(2) Where all the dioceses of any province so assent to the constitution, the constitution shall apply to the province as well as to each diocese.

If any diocese of a province so assents but any other diocese of the province does not so assent to the constitution, the diocese so assenting shall cease to be included in the province.

(3) If any diocese in Australia does not assent to the constitution the diocese shall not by reason only of that fact be deprived of fellowship or communion with this church or with any diocese of the Church of England in Australia and Tasmania, and may have association with this church on such terms and conditions as may be agreed upon by ordinance of the diocesan synod of the diocese and by canon of the general synod.

Operation of the constitution.

61. The constitution and all acts matters and things done under the constitution shall be binding on the bishops clergy and laity as members of this church and for all purposes connected with or in any way relating to church trust property.

Previous compacts enactments.

62. Every consensual compact and every enactment in force in this church, or in any province or diocese which has become or becomes a province or diocese to which the constitution applies shall, subject to the constitution, continue in force in this church or in the province or diocese, until altered under the constitution in the case of any compact or enactment in force in this church, and until altered under the constitution of the province or diocese in the case of any compact or enactment in force in the province or diocese, as the case may be.

This section extends to any determination rule or regulation made by the synod known as the General Synod of the Dioceses in Australia and Tasmania any constitution act canon or ordinance made by the provincial synods of New South Wales Victoria Queensland and Western Australia respectively and any constitution act canon ordinance rule or regulation made by the diocesan synod of any diocese in Australia.

Decisions of Privy Council and English Courts.

63. No decision of the Judicial Committee of the Privy Council or of any other court in England on any question as to the faith ritual ceremonial or discipline of the Church of England in England shall bind any court or tribunal on any question as to the faith ritual ceremonial or discipline of this church, but nothing in this section shall preclude any such decision from being cited to any court or tribunal as a persuasive precedent.

This section shall apply to a decision given either before or after the date on which this constitution takes effect.

History of the Church in England.

64. Where any question arises as to the faith ritual ceremonial or discipline of this church or as to the authorities powers rights and duties of bishops priests and deacons of this church or any officer or member thereof recourse shall unless the general synod by canon otherwise prescribes be had to the history canons practice and customs of the Church of England in England.

This section shall not apply to any canon practice or custom which applies to the Church of England in England by reasons only of its being the established church thereof.

Intrepretation.

65. (1) In the constitution unless the context or subject matter otherwise indicates—

" Australia " includes any part of His Majesty's Dominions within the Commonwealth of Australia and any territory in respect of which a mandate is exercised by the Government of the Commonwealth of Australia.

" Canon " includes a constituent and a provisional canon.

" Church trust property " means property held in trust for or on behalf of or for the use of this church and includes property held for the benefit of or in connection with any diocese or parish or otherwise.

" Diocesan bishop " means bishop of a see.

" Diocesan synod " and " synod of a diocese " include a provisional synod.

" Diocese " means a diocese of this church.

" General synod " means the general synod under the constitution.

" License " means a license under seal of a bishop of a diocese and " licensed " has a meaning corresponding with that of license.

" Metropolitan " includes the senior bishop exercising the authorities powers rights and duties of the metropolitan.

" Ordinance " includes any act canon constitution provision statute or other enactment of a provincial or diocesan synod or of the competent authority in or with respect to a missionary diocese.

" Parish " means any parish parochial district or similar pastoral division constituted by or under ordinance of the synod of a diocese an electoral area for the election of representatives to the synod.

" Parishioner " means any person entitled to vote at the election of representatives of the parish to the synod of a diocese.

" Primate " includes the metropolitan or senior bishop exercising the authorities powers rights and duties of the primate.

" Provincial synod " includes a provincial council.

" See " means a see of this church.

" State " means a State of the Commonwealth of Australia.

" The constitution " or " this constitution " means the constitution of this church.

" This church " means the Church of England in Australia.

" Voting by orders " refers to two distinct votes being taken, that is to say, a vote of clerical representatives, and a vote of lay representatives.

(2) In the constitution " the book of common prayer " means the book of common prayer as received by this church before and at the date of the convention mentioned in section one of the constitution, that is to say, the book of common prayer and administration of the sacraments and other rites and ceremonies of the Church according to the use of the Church of England together with the psalter or psalms of David pointed as they are to be sung or said in churches and the form and manner of making ordaining and consecrating bishops priests and deacons.

For the purposes of this definition, " the book of common prayer " shall be deemed to include the articles of religion, sometimes called the thirty-nine articles.

(3) In the case of lay but not of clerical persons words in the constitution importing the masculine shall include the feminine.

Chapters. 66. This constitution is divided into the following chapters :—

Chapter I.—The Declarations.
Chapter II.—The Government of the Church.
Chapter III.—The General Synod.
Chapter IV.—The Provinces and Provincial Synods.
Chapter V.—The Dioceses and Diocesan Synods.
Chapter VI.—The Tribunals.
Chapter VII.—The Property of the Church.
Chapter VIII.—The Book of Common Prayer.
Chapter IX.—The Alteration of the Constitution.
Chapter X.—The Operation of the Constitution.

FIRST TABLE ANNEXED TO SCHEDULE ONE.

Clerical and Lay Representatives in the General Synod.

1. The number of clerical and lay representatives respectively of each diocese shall be in proportion to the number of clergymen of the diocese and shall be determined by dividing that number by a quota, and if on the division there is a remainder, the diocese shall be entitled to one more clerical and one more lay representative.

The primary quota shall be fifteen, provided that where the number of clergymen exceeds three hundred the quota shall in respect of the excess be doubled.

2. Notwithstanding any other provision in this table each diocese shall be entitled to at least one clerical and one lay representative.

3. Notwithstanding any other provision in this table the general synod may by canon vary the primary quota.

4. In this table "clergyman" means a clergyman resident and duly licensed to officiate in the diocese concerned.

SECOND TABLE ANNEXED TO SCHEDULE ONE.

Diocesan Synods.

Provisions which may be adopted in the constitution of a new diocese or by ordinance of the synod of any diocese.

1. The diocesan synod shall consist of the bishop the licensed priests of the diocese or such of them as may be prescribed by or under ordinance of the synod, and lay representatives of each parish of the diocese, together with such additional members, if any, as may be prescribed by or under ordinance of the synod.

Composition.

A parish shall mean any parish parochial district or similar pastoral division constituted by or under ordinance of the diocesan synod an electoral area for the election of lay representatives to the synod.

2. (1) An election of the lay representatives of a parish shall be held under a mandate of the bishop once at least in every three years at such time as may be prescribed by ordinance of the diocesan synod.

Lay representatives.

(2) The lay representatives of a parish shall be elected and certified, and any vacancy in the place of a lay representative may be filled, in such manner as the diocesan synod may by ordinance determine.

(3) The number of lay representatives for any parish shall be one two or three as may be prescribed by or under ordinance of the diocesan synod.

(4) No person who is under the age of twenty-one years or is not a communicant of this church shall be qualified to be elected or to vote for the election of a lay representative.

3. The diocesan synod may determine in such manner as it may deem proper whether any person who claims to be a member of the synod is entitled to be such member, and may determine whether he has been duly and lawfully elected appointed or summoned to the synod. **Claim to membership.**

4. (1) The diocesan synod may proceed to the despatch of business notwithstanding the failure of any parish to provide for its representation in the synod. **Failure to return representatives.**

(2) No ordinance rule act or exercise of power of the diocesan synod shall be vitiated by reason only of the fact that any person to be elected appointed or summoned to the synod has not been elected appointed or summoned, or by reason only of any informality with respect to the election appointing or summoning.

5. (1) The bishop of the diocese or in his absence a commissary appointed by him in writing shall be the president of the diocesan synod, and if there is no such commissary present or the see is vacant, the person appointed for the purpose by or under any ordinance rule or resolution of the synod shall be the president. **President.**

(2) The president may take part in any discussion.

(3) The president may with the concurrence of the diocesan synod prorogue and dissolve the synod.

6. The quorum of the diocesan synod shall be such quorum as may be prescribed by ordinance of the synod. **Quorum.**

7. Any question to be determined by the diocesan synod shall be determined in such manner and by such majority, and whether on voting by orders or otherwise, as may be prescribed by ordinance of the synod, and until otherwise prescribed, the question shall be determined by majorities on voting by orders, that is to say, a majority of the clerical representatives voting thereon and a majority of the lay representatives voting thereon. **Voting.**

8. (1) The diocesan synod may make ordinances for the order and good government of this church within the diocese. **Powers.**

This sub-section shall not be deemed to be a direction or permission to prescribe by ordinance of the diocesan synod within the meaning of paragraph (e) of sub-section one of section twenty of the constitution of this church, but otherwise nothing in this section shall limit any powers of the diocesan synod under the constitution of this church or under the constitution of the diocese.

(2) The following matters are enumerated as being within the powers mentioned in sub-section one of this section, but the enumeration shall not limit the generality of the provisions of that subsection :—

(a) the election of the bishop of the diocese ;

(b) the erection or constitution of a church to be the cathedral church ;

(c) the appointment authorities powers rights and duties of coadjutor and assistant bishops and other diocesan officers ;
(d) the oaths declarations and assents to be required of persons who desire to be licensed to exercise the functions of any spiritual or lay office ;
(e) the licenses to be issued by the bishop, the tenure and conditions of office thereunder, and the circumstances in which the bishop may suspend or revoke a license ;
(f) the general standards of education and fitness to be attained by persons who desire to be admitted to holy orders or to the ministry of this church ;
(g) the promotion of sound learning and theological study among the clergy and laity ;
(h) the establishment recognition and support of schools colleges hospitals and other charitable institutions and social agencies ;
(i) the promotion of the cause of home and foreign missions ;
(j) the commendation of forms of service not contained in the book of common prayer for use on special or commemorative occasions ;
(k) the election or appointment of lay and clerical representatives of the diocese in the provincial or general synod, and the filling of a vacancy in the place of any such representative ;
(l) the appointment of a person to be the president of the diocesan synod in the absence of the bishop and commissary or during a vacancy of the see ;
(m) the election of lay representatives of each parish, the number of lay representatives of any parish, the filling of a vacancy in the place of a lay representative of any parish, and the election or appointment of additional members, in the diocesan synod ;
(n) the determination of any claim to membership of the diocesan synod, and of the validity of any election appointment or summons to the synod ;
(o) the grounds on which a person may be disqualified from being elected or from sitting or voting as a member of the diocesan synod ;
(p) the formation union and division of parishes, the alteration of the boundaries thereof, the constitution of other pastoral areas or charges ;
(q) the election or appointment of church wardens and other parochial officers ;
(r) the regulation and management of the affairs of the diocese and of any parish or pastoral area or charge thereof ;
(s) the regulation management and disposal of property moneys and revenues under the control of the diocesan synod, subject to the trusts affecting the same, whether original or as varied in accordance with the trust instrument or by any Act of Parliament, and the keeping and rendering of proper accounts;
(t) the provision of superannuation and provident funds for clerical and lay officers ;
(u) insurance against any loss or damage, whether by fire or otherwise, in respect of any insurable church trust property and against any risk or liability in respect of any person in the service or employment of this church ;

(v) matters directed or permitted by the constitution of this church to be prescribed by ordinance of the diocesan synod ;

(w) matters incidental to the execution of any power vested by the constitution of this church in the diocesan synod.

(3) The diocesan synod may refer to the general synod any matter affecting this church either for the purposes of section twenty or for the purposes of section twenty-one of the constitution of this church.

Ordinances.

9. (1) An ordinance of the diocesan synod shall be made by a bill passed in accordance with the standing orders.

(2) The bill shall be initiated by a motion for leave to bring in the bill, and shall not be passed until the bill has been read a first and second time, considered in committee after the second reading, and read the third time.

Rules.

10. (1) The diocesan synod may make rules prescribing any thing necessary or convenient to be prescribed for carrying out and giving effect to any ordinance of the synod or for controlling and regulating the affairs of the synod, and in particular may make rules prescribing—

(a) the procedure for any election or appointment to be made by or under the authority of the synod to any office ;

(b) the authorities powers rights and duties of any officer committee board or commission of the synod.

(2) A rule shall be made by resolution after notice has been duly given in accordance with the standing orders.

Ordinances and Rules.

11. (1) An ordinance or rule of the diocesan synod shall not take effect or have any validity unless within three months after the passing of the same the bishop shall assent thereto in writing.

If the bishop does not so assent, and the ordinance or rule is again passed at the next session of the synod by two-thirds of the clerical representatives voting and two-thirds of the lay representatives voting, the synod may refer the ordinance or rule to the house of bishops of the general synod with provision for the presentment of the case for the diocesan synod and the house of bishops may determine whether the ordinance or rule is to have effect notwithstanding that the bishop has not consented thereto.

(2) An ordinance or rule of a diocesan synod shall be binding on the bishop clergy and laity of this church in the diocese.

Resolutions.

12. The diocesan synod may pass resolutions declaring the view of the synod on any matter affecting this church or affecting spiritual moral or social welfare.

Standing orders.

13. The diocesan synod may regulate the conduct of the business of the synod under standing orders or otherwise as it may deem proper.

Sessions.

14. There shall be a session of the diocesan synod once at least in every year unless the synod has by resolution previously directed that a longer period shall elapse.

The session shall be held at such time and place as may be appointed by or under any ordinance of the synod.

Proceedings.

15. The proceedings of the diocesan synod shall be duly recorded and be authenticated by the signature of the president.

Every ordinance of the diocesan synod shall be printed in duplicate, and each duplicate shall be compared and certified as correct by the

president, the chairman of committees and the secretaries of the synod, authenticated by the official seal and filed in books.

Seal. 16. (1) The diocesan synod shall have an official seal, which shall be judicially noticed.

The seal shall not be used to authenticate any ordinance rule resolution instrument or document or any copy thereof except upon a resolution of the synod or of the diocesan council of the synod and in the presence of at least three members of the council.

(2) Any ordinance rule resolution instrument or document authenticated by the official seal shall be admissible in evidence without further proof.

A copy of any ordinance rule or resolution authenticated by the official seal and purporting to be certified by at least three members of the diocesan council as a true copy shall be evidence of the ordinance rule or resolution and be admissible in evidence without further proof.

Diocesan Council. 17. There shall be a diocesan council which shall consist of the bishop and such number of clergymen and laymen, and elected or appointed in such manner, as may be prescribed by ordinance of the diocesan synod.

The diocesan council shall have such authorities powers and duties as may be prescribed by ordinance of the diocesan synod.

The seal books and records of the diocesan synod shall be entrusted to the diocesan council for safe keeping.

Committees Boards and Commissions. 18. The diocesan synod may appoint any committee board or commission that it may deem proper for carrying out or giving effect to any ordinance rule or resolution of the synod.

Unless otherwise provided by ordinance or rule of the synod—

(a) the committee board or commission may include or consist of persons who are not members of the synod ;

(b) the members of the committee board or commission shall be elected or appointed and shall hold office as may be determined by resolution of the synod, but shall not, unless the resolution so provides, cease to be members of the committee board or commission by reason only of ceasing to be members of the synod ;

(c) the committee board or commission shall have such powers and duties as may be conferred or imposed by resolution of the synod ;

(d) the committee board or commission may, if the synod by resolution so directs, continue to exist and to exercise and perform its powers and duties, until the expiration of the first week of the next following ordinary session of the synod, notwithstanding the prorogation or dissolution of the synod by which the committee board or commission is appointed.

SCHEDULE TWO.

SCHEDULE THREE.

DOCUMENT X

REPORT TO THE GENERAL SYNOD OF 1921 OF THE COMMITTEE TO ENQUIRE INTO THE BASIS OF CHURCH CONSTITUTION IN AUSTRALIA.

(Reprinted from the *Official Report*, 1921, Appendix X, pp. 130–138.)

1 The primary question to which your Committee was instructed to address itself in the resolution under which it was appointed by the General Synod of 1916, was :—

(a) To consider whether the existing legal position of the Church in Australia, and its relationship to the Church in England, and to the Anglican Communion, as declared in the Opinion of Counsel upon the "Nexus Question," is satisfactory as a permanent basis for Church fellowship within Australia, and for corporate fellowship with the Church in England, and with other branches of the Church Catholic in communion with the Church in England.

Upon the question your Committee begs to report that in its opinion the existing legal position of the Church in Australia and its relationship to the Church in England and to the Anglican Communion is not satisfactory as a permanent basis for Church fellowship within Australia, or for corporate fellowship with the Church in England and with other branches of the Church Catholic in communion with the Church in England.

Review.

2. In explanation of the considerations which have led it to this conclusion your Committee desires first briefly to review the present position of the Church and the historic circumstances under which it took shape :—

The Courts of Law in England had given decisions declaring the status of the Church in self-governing colonies to be that of a voluntary society. In view of this fact it became desirable for constitutions to be adopted for the purpose of defining the trusts on which Church property was to be held, and of providing for Church government generally.

The Dioceses of the Church of England in Australia and Tasmania therefore found it necessary to state their standards and formularies of faith and order to meet the circumstances in which they were placed. There was thrust upon the Church the necessity of making a corporate autonomous decision, and of having this autonomous act embodied in the various Constitution Acts or kindred documents. The decisions reached in that early stage of diocesan life in Australia were practically uniform throughout the dioceses of Australia. They retained *en bloc* the standards and formularies of faith and order of the Church of England in England as these then stood, and made no provision for interpreting or giving final decisions upon these standards and formularies.

Reasons for Dissenting from the Perpetuation of this Position.

3. While it is impossible to set forth in this report all the considerations in favour of reform which have been presented during

the protracted discussions of your Committee during the past four years, we desire to set forth the following summary of reasons why the present position cannot be regarded as permanently satisfactory. It is to be understood that these reasons are not regarded by all members of the Committee as of equal cogency, nor does each member of Committee necessarily accept each reason set forth as affecting his decision upon the primary question, but the Committee feel that their cumulative force establishes the need for seeking a reformed basis for the Church in Australia.

(a) It is claimed that the Church in Australia is a " Particular or National Church " in the sense intended in Article 34, and that as such it (in the words of the Article) " hath authority to ordain, change and abolish ceremonies or rites of the Church ordained only by man's authority, so that all things be done to edifying." Seeing that this authority is declared in the Articles of our religion to be inherent in a particular or national Church, it is considered inconsistent with, if not subversive of the true character of such a Church to acquiesce in the restraint constitutionally imposed upon itself in the exercise of this authority.

(b) History has moved fast in the last few years, and Australia has now been called to a recognised position as one of the Nations of the world—national sentiment has developed rapidly and strongly. The Church of England in Australia already begins to occupy a constitutional position, anomalous and out of date when compared with all other political and religious institutions. The Church will be unduly hampered in fulfilling its proper mission to Australian national life if it retain a form, order and constitution out of harmony with, and alien from the spirit of nationhood in which it is called to work.

(c) The Church should make provision for the reconsideration of its name, style, or title. Our proposal, as shown later, is at the present time merely to make such provision, and to consider the need at a later stage. Many think that the need of reconsideration is already urgent. It should be pointed out that already the Church in Australia has been called upon to assume a name. In the first instance it bore the name of the " United Church of England and Ireland in (name of State.") At a later stage the name was changed to that of " The Church of England in (name of State)." This style and title is strongly felt by many to be not only on general considerations opposed to all historic precedent and Catholic principle, but also to be misleading, inappropriate and disadvantageous as the designation of our Church in Australia.

However, it is clearly to be understood that the proposal now to be submitted is for provision to review the name of the Church at any subsequent period, and not to effect a change at present.

d) It is felt that the Church should accept its proper responsibility of interpreting the formularies it has adopted, and have power to appoint a Tribunal of Reference in Australia or elsewhere which shall be the final court of appeal from Diocesan or Provincial tribunals in disputes concerning faith and order. Should a dispute arise at the present time involving

any interpretation as above it would be decided in the last resort by reference to decisions already given by English Ecclesiastical Courts, before none of which could the Australian Church be directly represented or plead.

(e) The Church in Australia would be following the example of other Churches included in the Anglican Communion beyond the provinces of Canterbury and York. The Churches in Ireland, Scotland, Wales, Canada, United States of America, and South Africa are already exercising the powers of self-government, which the Church in Australia is recommended to acquire without in any way imparing their full spiritual communion with the Church in England. Under the Enabling Act the Church in England has obtained powers in a similar direction.

(f) The Encyclical Letter of the Lambeth Conference of 1908 contains the following words, the spirit of which we believe is embodied in the proposals now before you :—

"If the Anglican Communion is to render that service to the varied needs of mankind to which the Church of our day is especially called, regard must be had both to the just freedom of its several parts and to the just claims of the whole Communion upon its every part. The freedom of local development which is a characteristic element in the inheritance which the Anglican Communion has received, and in the traditions of the English-speaking race, and which also belongs of right to the native churches which we have fostered, must have its balance and check in opportunities for mutual consultation and advice."

(g) The effort to effect union with other Christian communions cannot be entered into by the Church in Australia as a body free and competent to offer and receive proposals for union until the Church in Australia is able (a) to speak with a free mind ; (b) to speak with one mind.

Resolution 11 of the Lambeth Conference, 1920, lays such a duty upon us, viz., "The Conference recognises that the task of effecting union with other Christian Communions must be undertaken by the various national, regional, or Provincial authorities within the Anglican Communion, and confidently commits to them the carrying out of this task on lines that are in general harmony with the principles underlying its appeal and resolutions."

Resolution 14 reinforces this obligation as it affects us in Australia, viz., "It is important to the cause of reunion that every branch of the Anglican Communion should develop the Constitutional Government of the Church. . . ."

If we are to begin to carry out this task "confidently committed" to us by the Lambeth Conference we must establish ourselves on a basis of self-determination similar to that of those other Christian Communions in Australia whom we would invite to join us in the quest for union.

It is worth while to add one general consideration. There is a fear in some minds lest the provision for the wider exercise of autonomy in the Church in Australia would lead to a breach with the Mother Church. We believe that this fear is utterly ground-

less. The grant of autonomy to the Dominions comprising the British Empire has strengthened rather than weakened the unity of the Empire; and there is every reason to suppose that the proposals here set forth will have the same effect in the spiritual sphere.

Your Committee is therefore of opinion that an effort should be made by the Church to secure a more satisfactory basis for fellowship.

4. In the event of our being of this opinion we were instructed under clauses (c) and (d) of the resolution :—

(c) "To present to next ordinary Session of General Synod a statement which, in the judgment of the Committee, sets forth the terms upon which satisfactory condition of fellowship as aforesaid may be based."

(d) "To report in detail upon all necessary steps that should be taken to make such a basis of fellowship operative and effective throughout the dioceses of the Commonwealth."

5. Two strongly contrasted courses of action were open to your Committee in endeavouring to fulfil this instruction : —

(a) To submit a draft of a new Constitution for the Church in Australia with revised standards and formularies of faith and order.

(b) To recommend the obtaining of amendments in our Constitution Acts under which the Church re-adopts all its existing standards and formularies, but makes provision for the exercise of power as need arises for making such variations in the name and style of the Church and the standards and formularies of faith and order as may be agreed to by the Synods of the Church under safeguards such as those set forth below.

Your Committee urges the latter course of procedure. It recommends no present change, beyond that of empowering the Church, acting through its Synods, to make changes as emergencies arise and the mind of the Church directs.

We believe that our suggestions contain such safeguards against hasty action and wide sweeping changes on the part of the Church in Australia as will upon careful perusal reassure the more hesitating and doubtful mind.

6. It may be well to point out, however, that in addition to the Constitutional checks and safeguards that can be set out on paper, other practical checks exist which will operate very powerfully though they are incapable of expression in legal enactment.

Such bodies as Church Synods are always more inclined to maintain the *status quo ante* than to cast their votes for a new order. The case for change would require to be one of almost overwhelming force to secure the suffrages of General and Diocesan Synods in the proportions required in our proposals.

The apprehensions lest any action might be taken to compromise the Church's claim to be a part of (a) Christ's Holy Catholic Church, (b) the Anglican Communion would be a powerful deterrent, and the ever present desire to maintain the internal unity of the Church in Australia would also ensure that nothing would be done which failed to approve itself to the almost unanimous mind of the Church in Australia.

7. There is a final ground of confidence. The Church is not at the mercy of forces which are merely human ; and we may trust that the Holy Spirit who gives it life will also give wisdom.

Proposals for Reform.

8. The amendments which your Committee recommend to be inserted in the various Constitution Acts and Fundamental Provisions of the Dioceses of the Church of England in the Commonwealth of Australia are as follows (it being understood that legal drafting Committees would adopt the *formulæ* proposed to meet the case of each particular legal instrument involved) :—

The Church of England in the Diocese or Province of..... being a Church in full and complete communion with the Church of England in England, and with the Churches in other Dominions and countries which are in Communion with the Church of England in England hereby declares :—

(1) That until further order be taken by duly constituted authority of the Church of England in the Commonwealth of Australia as set forth hereinafter, the standards and formularies of faith and order in the said Church are and shall be those in use by lawful authority in the Church of England in England on (*date*) namely, the Book of Common Prayer, and of Ordaining of Bishops, Priests and Deacons, and the Articles of Religion.

(2) That the Church of England in the Commonwealth of Australia, acting through its Synods, may from time to time make alterations in the name and style of such Church, and in the standards and formularies of faith and order accepted above.

(3) That the said Church may make provision for a Tribunal of Reference in Australia or elsewhere, which shall be the final Court of Appeal from Diocesan or Provincial Tribunals in disputes concerning faith and order.

Provided that—

(a) No such proposed alteration shall be initiated except by a Determination to be submitted to the General Synod of the Church of England in the Commonwealth of Australia. A copy of any such proposed Determination shall be forwarded to the Primate of the Church in Australia for distribution to members of the General Synod at least four months before the Session of the Synod at which it is to be considered.

(b) No such Determination shall be considered to have been passed by the General Synod until it shall have received in its favour three-fifths of the votes of such of the clerical members of the House of Representatives as are present and voting, three-fifths of the votes of such of the lay members of the House of Representatives as are present and voting, and three-fifths of such members of the House of Bishops as are present and voting.

(c) Every such Determination being declared passed as above shall be remitted to the Synod of each Diocese of the Church of England in the Commonwealth of Australia, and shall not be considered to have been accepted by any such Diocesan Synod until it shall have received in its favour three-fifths of

the votes of the members of such Synod being present and voting.

(d) If it be reported at any ensuing session of General Synod that such Determination has been and still remains accepted by not less than two-thirds of the Diocesan Synods in Australia, the Determination shall be again submitted to the vote of General Synod, and if it should receive in its favour three-fifths of the votes of the members of each House of the Synod being present and voting, and provided that the total number of affirmative votes shall not be less than half the total number of members whose attendance has been recorded, then any such alterations in the name and style of the Church of England in the Commonwealth of Australia, or in the formularies of faith and order as may be contained in such Determination shall be henceforth the name and style of the said Church, and be the formularies of faith and order of the said Church as so amended.

When any such Determination has been passed by the General Synod in the manner required in Proviso (b) above, the General Synod shall thereupon by resolution determine whether the Standing Committee of General Synod be instructed, upon the said Determination being accepted by not less than two-thirds of the Diocesan Synods, to submit it to the Archbishop of Canterbury and the Consultative Body of the Lambeth Conference, or either of them ; and it shall be the duty of the Standing Committee to communicate to the Bishops of Australia, for the information of their respective dioceses, the replies that may be received.

Legislative Action.

9. The Legislative sanction required to enable the Church in Australia to acquire such a degree of autonomy as outlined above, without jeopardising its title to Church property would be as follows :—

(1) An Act of Parliament in each of the States of the Commonwealth.

(2) An Ordinance of the Legislative Council for the territory of Papua.

(3) An Act of Parliament of the Commonwealth in respect to any territory administered by the Commonwealth or under mandate in the event of such territory being brought within an Australian diocese.

(4) An Act of the Imperial Parliament.

Such Acts and Ordinances, after reciting the adoption of the amendments in the Constitution by the various Dioceses, should enact that all real and personal property within or subject to the jurisdiction of the particular legislature, and held upon any public or private trust for, or in connection with the Church of England, in any part of the area covered by the various Dioceses, should be held upon a similar trust for or in connection with the said Church under its amended Constitution.

Procedure to Effect the Proposed Change.

10. In order that the mind of the Church upon these proposals may be fully tested under due safeguards, your Committee is

presenting to the Session of General Synod to meet in 1921 a motion for leave to bring in a Determination setting out in Legislative form the proposal contained in Section 8 hereof.

A copy of the proposed Determination was, in accordance with Proviso 8 (a), forwarded to the Primate for distribution to members of the General Synod four months prior to the present Session.

Should the General Synod pass the proposed Determination in the manner required by Proviso 8(b), a further motion will be submitted to appoint a Central Legal Drafting Committee.

Upon it being reported that three-fifths of the Diocesan Synods have accepted the Determination, this Committee shall proceed to draft the necessary amendments to be submitted to the Legislatures indicated above, and shall submit these amendments for the approval of General Synod at its Session in 1926, together with reports from the Standing Committees, Diocesan Councils and similar bodies representing the Provincial or Diocesan Synods which the Committee shall consult in the drafting.

It is hoped that such general agreement would be reached by the time of the meeting of General Synod in 1926, that the Synod would then be able to give its final approval to the Determination and to the Acts proposed to be submitted to the various Legislatures.

Instructions would then be given to endeavour to secure the passing of these Acts, and if their passage is secured the General Synod of 1931 would meet with the Church able to exercise these wider powers provision for which your Committee recommends should be made.

If the General and Diocesan Synods at once availed themselves of these powers to make changes in the name or formularies of the Church, these changes would not become operative until approved by the General Synod of 1936.

The course recommended is not precipitate. A cautious amendment such as is proposed is the best safeguard against precipitancy under stress at a later date.

On behalf of the Committee,

(Sgd.) JOHN CHARLES SYDNEY,
Chairman.

TABLE OF BISHOPS

AUSTRALIA

Australia, or Sydney, 1836. *Bishops:* W. G. Broughton, 1836; F. Barker, 1854; A. Barry, 1884; W. S. Smith, 1890 (Archbp., 1897); J. C. Wright, 1909 (Prim. of Australia, 1910); G. A. D'Arcy-Irvine (Bp. Coad., 1926).

Tasmania, 1842.
Bishops:
F. R. Nixon, 1842.
C. H. Bromby, 1864.
D. F. Sandford, 1883.
H. H. Montgomery, 1889.
J. E. Mercer, 1902; res. 1914.
R. Stephens, 1914.
R. S. Hay, 1919.

Adelaide, 1847.
Bishops:
A. Short, 1847.
G. W. Kennion, 1882.
J. R. Harmer, 1895.
A. N. Thomas, 1906.

Willochra, 1915.
Bishops: G. White, tr. 1915 (cons. 1900).
R. Thomas, 1926.

Perth, 1857.
Bishops: M. B. Hale, 1857.
H. H. Parry, 1876 (cons. 1868).
C. O. L. Riley, 1894; Archbishop, 1914.

Kalgoorlie, 1913.
C. H. Golding-Bird, 1914.
W. E. Elsey, 1919.

N.W. Australia, 1909.
G. Trower, 1909 (cons. 1902). *Vacant*, 1928.

Buxbury, 1904.
F. Goldsmith, 1904.
C. Wilson (cons. 1894), 1917.

Melbourne, 1847.
Bishops:
C. Perry, 1847.
J. Moorhouse, 1876.
F. F. Goe, 1887.
H. L. Clarke, 1902.
Archbishop, 1905:
H. C. Lees, 1921.

Ballarat, 1875.
Bishops:
S. Thornton, 1875.
H. E. Cooper (Coad.), 1895.
A. V. Green, 1900.
M. H. Maxwell-Gumbleton, 1916.
P. C. T. Crick, trans. 1927.

S. Arnaud, 1926.
M. C. James, 1926.

Bendigo, 1902.
Bishops:
H. A. Langley, 1902.
J. D. Langley, 1907.
B. Baker, 1920.

Wangaratta, 1902.
Bishops:
T. H. Armstrong, 1902.
J. S. Hart, 1927.

Gippsland, 1902.
Bishops:
A. W. Pain, 1902.
G. H. Cranswick, 1918.

Newcastle, 1847.
Bishops:
W. Tyrrell, 1847.
J. B. Pearson, 1880.
G. H. Stanton (cons. 1878), tr. 1891.
J. F. Stretch, 1906 (cons. 1895)
R. Stephens, tr. 1919 (cons. 1914).
G. M. Long, tr. 1928.

Goulbourn, 1863.
Bishops:
M. Thomas, 1863.
W. Chalmers, 1893.
O. G. Barlow (cons. 1891), tr. 1902.
L. B. Radford, 1915.

Riverina, 1884.
Bishops: S. Linton, 1884; E. A. Anderson, 1895.
R. C. Halse, 1925.

Bathurst, 1869.
Bishops:
S. E. Marsden, 1869.
C. E. Camidge, 1887.
G. M. Long, 1911.
H. Crotty, 1928.
A. L. Wylde, Bp. Coad., 1927.

North Queensland, 1878.
Bishops:
G. H. Stanton, 1878.
C. G. Barlow, 1891.
G. H. Frodsham, 1902.
J. O. Feetham, 1913.

Carpentaria, 1900.
(Formed out of N. Queensland and Adelaide).
Bishops: G. White, 1900.
H. Newton, 1915.
S. H. Davies, 1922.

Brisbane, 1859.
Bishops: E. W. Tufnell, 1859; M. B. Hale, 1875; W. T. T. Webber, 1885; St. Clair G. A. Donaldson, 1904; Archbishop, 1905; G. Sharp (cons. 1910), tr. 1921; H. F. Le Fanu, Bp. Coad. 1915.

Rockhampton, 1892.
Bishops: N. Dawes (cons. 1889), tr. 1892; G. D. Halford, 1908; P. C. T. Crick, 1921; F. L. Ash, 1928.

Armidale (formerly Grafton and Armidale), 1867.
Bishops: W. C. Sawyer, 1867; J. F. Turner, 1869; A. V. Green, 1894; H. E. Cooper (cons. 1895), trans. 1901; W. F. Wentworth Shields, 1916.

New Guinea, 1898.
Bishops: M. J. Stone-Wigg, 1898.
G. Sharp (cons. 1910), tr. 1921.
H. Newton (cons. 1915), tr. 1922.

Grafton, 1914.
C. H. Druitt (cons. 1911), 1914.
J. W. Ashton, 1922.

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